United States Court of Appeals

for the Second Circuit

APPENDIX

75-7476

United States Court of Appeals

FOR THE SECOND CIRCUIT

ANTONIO NAPOLI,

Plaintiff-Appellant,

—against—

[TRANSPACIFIC CARRIERS CORP., and
UNIVERSAL CARGO CARRIERS, INC.]

HELLENIC LINES LTD.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Robert A. Lynch:
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Docket Entries

DATE	PROCEEDINGS
Oct. 24, 74	Filed complaint and issued summons.
Nov. 6, 74	Filed Summons and marshals ret. Served: Hellenic Lines Ltd. on 10/29/74 by Mr. Hennessey, Claims Manager.
Jan. 13, 75	Filed Defts. Notice of Examination before trial of pltff. on 1/29/75.
Jan. 13, 75	Filed ANSWER.
Feb. 14, 75	PRE-TRIAL CONFERENCE HELD BY Ward
Mar. 11, 75	Filed Deft's. interrogs.
Apr. 2, 75	Filed Pltff's. answers to interrogs.
May 14, 75	Filed Defts'. pre-trial memorandum.
May 20, 75	Filed Pre-Trial Order . . . Ward, J. Consented To.
July 15, 75	PRE-TRIAL CONFERENCE HELD BY Ward, J.
July 25, 75	Filed Pltffs. Notice that the pltff. will move the court to amend as indicated.
July 28, 75	Before Judge Ward Trial begun
July 29, 75	Trial Continues
July 30, 75	Trial Continues
July 31, 75	Trial Continues—Jury Verdict for Deft.
Aug. 1, 75	Filed Pltffs. Request to Charge.
Aug. 1, 75	Filed Judgment that deft. have judgment against pltff. dismising complaint. Clerk. (mailed notice)
Aug. 14, 75	Filed Pltffs. Notice of Appeal from judgment entered 7-31-75. (mailed notice)
Aug. 18, 75	Filed Pltffs Notice of Appeal—from order dtd 7-31-75

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Civ. 4663

Judge Ward

(INITIAL)

ANTONIO NAPOLI,

Plaintiff,

—against—

TRANSPACIFIC CARRIERS CORP., and
UNIVERSAL CARGO CARRIERS, INC.,

Defendant.

(AMENDED)

ANTONIO NAPOLI,

Plaintiff,

—against—

HELLENIC LINES LTD.,

Defendant.

NOTICE IS HEREBY GIVEN that plaintiff, ANTONIO NAPOLI above named hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 31st day of July, 1975.

Notice of Appeal

Dated: New York, N. Y.
August 13, 1975.

Yours, etc.

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rgh 1 Napoli-direct

Antonio Napoli
v.
Hellenic Lines, Ltd.

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A N T O N I O N A P O L I, called as a witness, having been duly sworn, testified through interpreter, Anthony R. Amarante, as follows:

DIRECT EXAMINATION

BY MR. LORY:

Q Mr. Napoli, when and where were you born?

A The 13th of June, 1913, Calo Forte. Italy.

Q When did you first come to the United States, sir?

A In 1939.

Q Are you a citizen of the United States, Mr. Napoli?

A Yes.

Q When and where did you take your oath?

A Here in New York. I think it was in 1947 or 1948.

Q What is your occupation, Mr. Napoli?

A Longshoreman.

Q How long have you been a longshoreman?

A 36 years.

Q Do you belong to a union?

A Yes.

Q What union do you belong to?

A The Longshoreman's Union.

Q Is that the International Longshoremen's Association?

A Yes.

Q Now, you told us that you were a longshoreman, Mr. Napoli. I call your attention to the the year 1974. Were you a longshoreman during that year?

A Yes.

Q And were you at that particular time a regular member in a regular longshoreman type gang?

A Yes.

Q Did that gang have a hatch boss?

A Yes, sir.

Q What was his name?

A Frankie Battista.

Q Now, as of January, 1974, how long had you been in Frankie Battista's gang?

A A few years.

Q What was your job in that gang?

A Deck man.

Q What are the duties of a deck man? What does a deck man do?

A A deck man works at the winches and also to work on deck.

Q When a deck man works on deck what does he do?

A He has to watch the work that's being performed on the deck. He also has to see that the cargo comes from out of the hatch onto the dock and that the dock cargo comes back onto the ship.

Q How does he do this?

A With the winches.

Q Are you operating the winches at this time or are you doing something else?

MR. REID: Your Honor, may I make a suggestion, that he use the first person instead of he?

THE COURT: I think he said you at that point. Did you say he?

MR. LORY: I don't remember.

THE COURT: All right, let's go back and restate the question.

Q Were you talking about the time that you operate the winches?

A Yes, sir.

Q Does the deck man do something else when he is not operating the winches?

A Gangway man.

Q Is your answer that when he is not operating the winches he works as a gangway man?

A Yes.

Q What does a gangway man do?

A He gives the signals to the winch men to bring the cargo down into the hold of the ship or from the hold onto the dock.

Q Were you working regularly for any particular stevedoring company in January of 1974?

A Yes, sir.

Q What company, please?

A Hellenic Lines.

Q Did something happen to you while you were working for Hellenic Lines in January of 1974?

A Yes, sir.

Q Can you tell us, please, on what date?

A The 9th of January. It was snowing. We went aboard the vessel at 8 o'clock and they asked us to stand by.

Q Mr. Napoli, let me ask you questions so we can do it in order. This way the jury will better understand, okay?

On January 9th of 1974 were you working in Mr. Battista's gang?

A Yes, sir.

Q And on that day did there come a time that you worked aboard a ship?

A Yes, sir.

Q What was the name of that ship?

A Destiny.

Q Do you know what company owned the Destiny?

MR. REID: I object to that, your Honor.

THE COURT: Yes.

Q Is the Destiny the whole name of the ship or part of the name of the ship?

A It is the name of the ship.

Q Is it the whole name or part of the name?

A Hellenic Line.

Q On this day where was the Hellenic Destiny?

A It was north of the dock.

Q What pier?

A 57.

Q Had you worked aboard the Destiny at any time before January 9th of 1974?

A Yes, sir.

Q For how many days did you work on the Destiny?

A I worked aboard her on Saturday, I worked on board her on Monday, Tuesday and Wednesday I was injured.

Q Do you remember where you worked aboard the Hellenic Destiny on Saturday?

A I am not sure whether I worked in hatch number 1 or hatch number 2.

Q When you say Saturday, was that January 5th of 1974?

A Yes, sir.

Q I take it you are not sure whether you worked at number 1 or number 2 hatch, is that what you are saying?

A I don't remember exactly, but I do know that I worked in either one or the other.

Q Do you remember where you were working aboard the Destiny on January 7th, which was Monday?

A I don't remember too well.

Q Do you remember where you were working on January 8th, Tuesday, aboard the Destiny?

A I believe that it was hatch number 2.

Q Where were you working on January 9th, on the day that you got hurt?

A Hatch number 5.

Q At any time on January 5th, 7th or January 8th had you worked at number 5 hatch?

A No.

Q On January 9, 1974, what time did you arrive at the pier?

A At about a quarter of 8.

Q What were the weather conditions on January 9th when you arrived at the pier?

A It was snowing.

Q Do you know what time it started to snow?

A I think about 3 o'clock, something like that.

Q How do you know it was snowing at 3 o'clock?

A I had a window in my house opened and I got up to close it.

Q When you arrived at the pier at a quarter of 8 on January 9, 1974, that's the 57th Street pier, what did you do then?

A The boss sounded the whistle, called us and called for stand by.

Q Did you go some place to stand by?

A Yes. We went aboard the vessel.

Q What vessel did you go aboard?

A Destiny.

Q Where did you go aboard the Destiny, what part of the ship?

A Where the sailors eat.

Q Did you stay there for a period of time?

A Yes. Almost until 11 o'clock.

Q Was the whole gang there with you?

A There were a lot of people there.

Q But was all of Battista's gang there?

A There were many of them there, yes.

Q You said that something happened at 11 o'clock.

A At 11 o'clock they called us to go to work.

Q Where were you told to go to work?

A Hatch number 5.

Q What were you to do in hatch number 5?

A To take the cargo and bring it onto the dock.

Q Is that referred to as a discharge operation?

A Yes.

Q How did you get from where the mess hall was which you had stood by into the number 5 hatch; how did you go there?

A We went towards the inshore side but there were drums on the deck and we went over them.

Q How did you get over the drums?

A There was a ladder there with three steps.

Q When you saw these three steps what did you do?

A We passed and went over and went aft.

Q Did you go up those stairs?

A Yes, sir.

Q And did those steps take you on top of the drums?

A Yes.

Q Did you find something on top of the drums?

A Plywood.

Q Was there anything on this plywood when you we

going to the number 5 hatch at 11 o'clock?

A There was some snow, but a little.

Q These steps, where were they located on the ship, near what hatch?

A It is at the end of hatch number 4, at the front.

Q Now, you said that there was some plywood on top of the drums. Will you tell us how it was laid out from the forward part of the vessel towards the after part from number 4 to number 5?

A It was stowed this way (indicating) on top of the drums.

Q Indicating in a line?

A In a line.

Q Did this plywood continue in a line all the way down to the number 5 hatch?

A Yes, sir.

Q When you got to the number 5 hatch did you see anything else on top of the drums?

A On top of the plywood or on top of the barrels?

Q On top of the plywood at this point.

A It was snow.

Q When you got to the number 5 hatch were the booms already in position to work cargo?

A Yes, sir.

Q Was the hatch already opened, the square of the hatch?

A It was opened, yes.

Q What was your job at this particular time?

A To give the signals to the winch man so he can take the draft over onto the dock.

Q Where would you position yourself to do this?

A Almost on the aft end of hatch number 5 on top of the plywood on the drums.

Q Was this the same plywood that you told us was in a line or was it something else?

A No, there was a piece here and then there was a piece that went outside of that (indicating).

Q When you are indicating are you indicating forward and aft or are you indicating Burton?

A This is hatch number 5 and the piece was here because I had to look over onto the dock.

Q Mr. Napoli, let me try to get at it this way. You told us before that there was a line of plywood going from number 4 hatch all the way back to number 5 hatch, is that right?

A Yes.

Q And in order to perform your job duties as a signal man what did you have to do with respect to the rail of the

ship and the coaming of the hatch?

A I had to go over there to look over the railing to see when the draft went onto the dock.

Q What was the distance between the ships inshore rail and the inshore side of the hatch coaming at that particular area?

A I don't understand your question too well.

Q Mr. Napoli, did you have to walk between the rail of the ship and the coaming in order to do your job?

MR. REID: I object, your Honor, leading.

THE COURT: Sustained.

Q Mr. Napoli, when you performed your work as a signal man did you stand in one spot or did you have to move around?

A No, I used to walk (indicating).

Q Where did you walk to and where did you walk from?

A I walked from near the coaming of the hatch over to the edge of the railing where the men were.

Q When you say the men were, what men are you talking about?

A From the dock -- the dock men. The men who took the draft.

Q What were you walking on in order to do this?

A On the plywood.

Q Was there anything on this plywood that you were walking on to go from the coaming over to the inshore rail of the ship?

A There was some snow.

Q Where was this snow?

A On the plywood.

Q What did this plywood rest upon?

A The plywood was on the drums.

Q Was there more than one layer of plywood over the drums?

A No.

Q All right, something happened to you, Mr. Napoli?

A Yes. When I went over to have the draft go over onto the dock.

Q Wait a minute, please, Mr. Napoli. You arrived at the number 5 hatch, is that correct?

A Yes.

Q And what happened when the gang arrived at the number 5 hatch? Did you begin to work cargo?

A Yes. The men went down into the hold.

Q And did there come a time when a draft of cargo was taken out of a hatch and brought over onto the dock?

A Yes, sir.

Q How many drafts came out of the hatch before you

had your accident?

A About four drafts, but no more than that.

Q Now, tell us, please, how your accident happened.

A I went over there in order to give the signals so that the --

Q Go over where?

A I went over towards the dock to give the signal to the winch man to send the draft down and the plywood underneath me slipped out from under me.

Q Then what happened?

A I fell.

Q Where did you fall?

A I fell between the drums.

Q Where between the drums?

A With my leg in some of the drums that were there.

Q Was there something else there besides drums?

A No.

Q In the place where you fell, was there something else there besides drums?

A There was plywood.

Q Mr. Napoli, do you remember going to Mr. Reid's office on February 4th of 1975?

A Yes.

Q Do you remember being asked many questions and

x x x x

refresh him, but at the moment I think Mr. Reid's objection is well taken.

Q Mr. Napoli, when you fell did any prt of your body strike anything?

A On the drum and some part of my back also was hit on the drums.

Q What did you fall upon, Mr. Napoli?

A I fell backwards. I fell over onto the plywood.

Q What happened next?

A It happened that my co-workers then came over, picked me up and took me out.

Q Who came over?

A The first one was the winch man and then the men from below came up.

Q Who was the winch man?

A Salvatore.

Q What's his last name?

A Mignano.

Q Did Salvatore do anything for you?

A No. He took me out onto the dock on a pallet.

Q Before you left the ship on a pallet was Mr. Battista there?

A No. They called him.

Q Did he come aboard the ship when he was called?

x x x x

Mr. Napoli?

A Yes.

Q When you have to do it by hand what must you do with your hands, your arms, your body to do this?

A You have to get down, you have to slacken on the preventer, pull the guy out and to secure it once again, that is the preventer.

Q Did you indicate to us with your motions that you have to haul on it?

A Yes, sir, you have to haul.

Q And do you have to haul on it to take out the slack once you get it in position?

A Exactly.

Q Can you still do this, Mr. Napoli?

A I can't do it.

Q Why can't you do it?

A Because I can't use my right hand any more.

Q Is that the basis for your not returning to work?

MR. REID: I object, your Honor.

THE COURT: Sustained.

Q Mr. Napoli, when you came aboard the Hellenic Destiny on January 9th of 1974 what did you see on the deck of the vessel?

A Snow.

Q How deep was this snow? How much snow was there?

A Maybe two inches, two inches and a half, something like that.

Q When you got to the number 5 hatch was it necessary for you to be able to look down into the hatch?

MR. REID: I object to that, your Honor, whether it was necessary or not.

THE COURT: Sustained.

Q When you were performing your job duties as a gangway man what did you have to do, what did you have to see?

A I was watching the drafts when they went over onto the dock and I was watching the drafts when they were in the hatch, when they were being pulled in one direction only.

Q What was the purpose of your looking into the hatch?

A Because the winch man can only look on one side. He had the cargo under the coaming.

MR. REID: I object as to what the winch man had.

THE COURT: Yes. I think that is a proper objection. Actually, then, do you move to strike it?

MR. REID: Yes, sir.

THE COURT: We will strike what the winch man saw

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THE COURT: Sustained. Asked and answered.

Q Mr. Napoli, as you were performing your job duty what were you walking upon?

MR. REID: We have been over this all before, your Honor.

THE COURT: I thought we had, too, but maybe there is a point to it and I am going to allow it.

A On the plywood.

Q Did you put any plywood down over the drums in the number 5 hatch?

A No.

Q The plywood that you were walking on, was that there when you arrived?

A Yes, sir.

MR. LORY: I have nothing further, Mr. Reid.

THE COURT: You may inquire, Mr. Reid.

CROSS-EXAMINATION

BY MR. REID:

Q Mr. Napoli, that back injury that you said you had, it wasn't in '42 or '43, was it, it was some time later than that, wasn't it?

A No, I remember it being around 1942.

Q Did you ever work for John T. Clark & Son, steve-dores?

XXXX

A No.

Q Mr. Battista was your hatch boss, was he not?

A Yes.

Q You took your orders from him?

A Yes.

Q He told you what to do?

A Yes, sir.

Q And you did not take any orders from any of the ship's officers?

A No.

Q Is Mr. Battista a friend of yours?

A He is not my friend.

Q Well, you worked with him for a year and a half, have you not?

A Sure.

Q Do you get along all right with him?

A Sure. You have to get along.

Q When you got back to the plywood at number 5 which you say that you walked on, how much snow was on the plywood at that time?

MR. LORY: Objection, your Honor, unless we have some specificity for the simple reason that the plywood extends from number 4 through number 5. Now, what portion of the plywood are we talking about?

THE COURT: All right, I think you might bring him back to the number 5 hatch, Mr. Reid.

MR. REID: All right, your Honor.

Q How many pieces of plywood did you have to walk on between the ship's hatch coaming and the ship's rail?

A You could figure that there were two pieces of plywood there, one and two.

Q Those pieces of plywood are about 4 by 6, 4 feet by 6 feet?

A I don't know because you have pieces also which are eight feet.

Q 4 by 8?

A They could have 4 by 8.

Q And what was the distance between the hatch coaming and the ship's rail?

A About ten feet.

Q So, then, the plywood, did it overlap one another?

A They were together, one here and one there alongside of each other.

Q Did they overlap each other in any way?

A Not like that. They were running the length of the ship this way. They were across, not the other way.

Q Was the plywood acrosswise the length of the ship or was it lengthwise the length of the ship?

MR. LORY: I object, your Honor. I don't understand it.

THE COURT: Sustained. I have difficulty with that. Do you know what fore and after is?

THE WITNESS: Yes, sir.

THE COURT: Was the plywood lying fore and aft or was it lying athwartship or across?

THE WITNESS: It was going fore and aft.

Q Now, these two pieces of plywood that you referred to, that was all that was in that area, was it not?

A Yes. They were right where I was going to walk over to look onto the dock.

Q And that's the only plywood that was in the immediate v cinity of the place that you were working, was it not?

A Yes.

Q Now, there was no plywood which was forward of that two pieces of the number 5 hatch extending out the number 4 hatch, was there?

MR. LORY: Objection as to form, your Honor.

THE COURT: If the witness understands the question I will let him answer it.

A There was a piece here and a piece there near number 4 and then from number 4 going to number 5 there was

a line of plywood.

Q Now, do you remember being in my office and me asking you questions on January 10, 1975, in the presence of your attorney, Mr. Lory?

A Yes.

Q Do you remember that we prepared a diagram of the place of the accident?

A I don't remember it now.

MR. REID: I will ask the clerk if she would please mark this.

THE COURT: This will be Defendant's Exhibit A for identification.

(Defendant's Exhibit A marked for identification.)

Q Do you remember you were asked to put certain marks on a piece of paper?

A Yes.

Q And you were asked to put the letter Y, like in yes, at the place you fell?

A Yes. I was working here.

THE INTERPRETER: He is indicating on the diagram where the X is marked, Mr. Reid.

Q You were asked to put an X where the plywood slipped underfoot?

A Yes. The plywood reached up to here. indicating

up to the letter Y on the diagram.

Q You were asked to put lines running alongside of number 4 hatch and number 5 hatch between the hatch coaming and the ship's rail to represent drums of cargo?

MR. LORY: Your Honor, I must object because I don't know what the purpose is, if he is trying to impeach the witness with this diagram or not.

THE COURT: Well, he is on cross-examination.

MR. LORY: But so far we have nothing inconsistent.

THE COURT: Don't say that. I don't know and you may not be as certain as your statement. Let me just suggest I think so far, although I don't quite see where we are going, it is proper cross-examination.

Let's have the last question and the answer back if you will, Mr. Reporter.

(Record read.)

THE COURT: Is that correct?

THE WITNESS: Yes, sir. The drums ran from here, indicating hatch number 5, down to hatch number 4 on the diagram.

Q You were asked, were you not, to put a square where the plywood was on which you stood?

A These were the two pieces of plywood that were there and then after that there was a line of plywood behind

that.

THE COURT: Indicating fore and aft on the deck.

Q And you indicated that there was a rise after that, did you not?

THE INTERPRETER: A rise?

Q Yes, the after house.

A What do you mean by a rise?

Q An after house. After the hatch, in back of the hatch there is a little house up off the deck.

A Yes, in the back.

Q Now, that house has a railing around it?

A Yes. All around the ship.

Q And on occasion the longshoremen, they stand on top of the after house and signal the winch man when to let the cargo down on the dock?

MR. LORY: Objection your Honor.

Q Isn't that so?

MR. LORY: Objection, your Honor.

THE COURT: Sustained. I think we have to relate it to this particular situation not situations in general. I will sustain that objection.

Q On that document you have WW for where the winch man is, do you not?

A Yes.

Q And that winch man and the winches are on a platform, are they not, about nine feet off the deck?

A Yes.

Q You have acted as a winch man on this ship before, have you not?

A Yes, sir.

Q Now, being up on the winch platform you can look down in the hatch, can you not?

MR. LORY: Objection, your Honor. We have no foundation that he was on this particular winch platform between number 4 and number 5. He merely asked him whether he had worked as a winch man on this vessel and he said yes.

THE COURT: All right, I will permit you to go back, Mr. Reid. I assume there may have been overwhelming platforms on the ship and, therefore, I will ask that you inquire whether he worked this particular winch.

Q Yes, you worked there at number 5 before, have you not, as a winch man?

MR. LORY: Of the Destiny?

A Before I was injured?

Q Yes.

A I think so, yes. I don't remember, but I think so.

Q Now, being up on the platform and operating the winches you can see down in the hatch whether men are working

can you not?

A Yes, sir.

Q Let me ask you this, have you acted as a gangway man previously on the Hellenic Destiny?

A No.

Q This was your first occasion?

A Yes.

Q Now, on the day of your accident all the hatches of the vessel were being worked, were they not?

A I think so, yes.

Q This is a five-hatch ship, is it not?

A I think it has five hatches, yes.

Q And how many men are in a gnag?

A 18.

Q And you had 18 men in each of the five hatches?

MR. LORY: Objection, your Honor. There is no such foundation with respect to that.

MR. REID: I will withdraw that question.

Q When you speak of 18, does that include the hold men, the men wo work in the hold, the winch men and the gangway men?

A The men that are down in the hatch, the winch men and the dock men.

Q Well, how many worked in a hatch?

A With the cargo that was in the hatch at the time ten men were working there.

Q And you have three winch men?

A Yes.

Q One man operates the winch and the other winch man, he is the gangway man and the third man is off; you rotate, do you not?

A Right. Yes, sir.

Q So when you are acting as a winch man you take a tour as a gangway man, do you not?

A Yes.

Q So I will ask you again, sir, does that refresh your recollection that when you worked as a winch man on a prior occasion on the Hellenic Destiny, you also worked on your tour of duty as a ganway man?

A Before I wasn't steady with the gang.

Q I thought you told me that you had worked in Mr. Battista's gang for a year and a half, or approximately that long.

A Yes, sir.

Q Now I will ask you again, sir, whether or not when you acted as a winch man on the Hellenic Destiny you also took your tour of duty as a gangway man.

A If it was my turn, yes.

Q When you worked as a gangway man on prior occasions on the Hellenic Destiny did you go up on the poop deck or the after house and act as signal man from that point?

MR. LORY: Objection, your Honor. The conditions present on this vessel on this day are unique to this day and what was done on prior occasions have no bearing in this lawsuit.

THE COURT: I am going to sustain counsel's objection. I don't see the relevance or materiality of the question.

MR. REID: If the Court pleases, the purpose of my question is to show that there can be more than one place to stand when you are acting as signla man or gangway man.

THE COURT: Why don't you go back, then. I see your point. I see the thrust of your question. Let's be clear whether he did act in this capacity aboard this vessel at the number 5 hatch on a prior occasion. He seemed vague before on this subject and I am going to ask you to go back now to ascertain that and then move into your question.

MR. REID: All right.

Q Let's go back, Mr. Napoli, and I will ask you a previous question which I already asked you and I want you to

give me a definite answer if you possibly can.

On the prior occasion --

MR. LORY: Your Honor, before we start this may we have a side bar? I don't want to interrupt Mr. Reid if I can avoid it once he starts, but can we have a side bar?

THE COURT: Yes.

(At the side bar.)

MR. LORY: The only time the condition of the after deck would be material here would be if Mr. Reid asked, as the foundation doesn't show, that the after deck was clear of snow. There is nothing on the record to indicate this, that the area of the after deck was any safer than the walking boards provided over the drums. On this particular basis I again renew my objection. I didn't want to say this in front of the jury because now I don't know whether it would be proper.

THE COURT: Mr. Reid?

MR. REID: The whole thrust of that question is there is another vantage point where a signal man can stand and work. Whether there is snow on the deck or rice on the deck or nothing on the deck, he is up above. That's my point.

THE COURT: What you are saying is that the ship owner had provided a safe place to work, to wit, the

other position.

MR. REID: Yes.

THE COURT: And that when he chose to work in a secondary position which might be considered a more dangerous position he assumed a risk and under the negligence doctrine should be barred, is that the thrust of your argument? I want to be sure I understand it.

MR. REID: It is not only that, your Honor. This man here, he chose a place which is obviously dangerous and he well knew that it was dangerous and that this area on the poop deck was in the area where you could stand by the ship's rail, hold on to the ship's rail and you can look down through the top and see everything that's going on.

MR. LORY: I think this is immaterial and irrelevant under the circumstances in this case.

THE COURT: Isn't the thrust of your case, Mr. Lory, against the ship owner that the ship owner failed to provide the plaintiff with a save placed to work?

MR. LORY: Yes, sir.

THE COURT: I would suggest under those circumstances this line of inquiry is proper. As I see it Mr. Reid is saying there was a safe place to work where he could have done his job and observed the entire operation in a proper fashion, but instead of climbing up to the safe

place he determined to station himself on a clearly, says Mr. Reid, less safe footing, which is on plywood. I would assume there was no plywood covering drugs upon the poop deck and under the circumstances it seems to me that if he, acting under the direction of the stevedore, chose to station himself at a less safe location the ship owner should not be liable for this. Now, you may have an argument relative to the fact that this station on the plywood between the coaming and the rail was the customary place for him to stand they stood there regularly. We don't yet know what the witness is going to be -- at least I don't know, maybe Mr. Reid has some prior testimony on the subject. Under the circumstances, though it may not be what would be called crystal clear, I can see relevance to the inquiry and I am going to permit it. Also this is cross-examination and it could well be also to go to the credibility of the witnesses and, therefore, I am prepared to rule that the objection is not in order and the question may be asked.

MR. LORY: If your Honor please, I will take exception to the court's ruling predicated upon the ground that there is no showing that the after deck which Mr. Reid makes reference to was free of snow, was any safer. The snow was present there as was on the plywood -- on the drums,

let me put it that way.

THE COURT: You can argue that if Mr. Reid in his summation argues to the contrary. I think I am going to let the record be developed here. I grant you that at the moment I don't know what was up there, I don't know if it was a flat steel deck, if it was a grating. I have no way of knowing at the moment whether it was clear of snow on that occasion or not. It may well be that Mr. Reid will produce evidence indicating that this was a clear area. Possibly there was grating through which the snow would fall. However, the plywood is a solid surface. I am going to permit the inquiry. I think it to be proper and, therefore, the objection is overruled.

MR. LORY: Thank you, your Honor.

(In open court.)

THE COURT: You may proceed, Mr. Reid.

Q Mr. Napoli, I am going to ask you a question that I asked you before and I want you to give me a definite answer if you possibly can. Now, the Hellenic Destiny had been in the port at Pier 57th Street on prior occasions, had she not?

A Oh, yes.

Q It is in there quite often during the period of a year, is it not?

A Yes, it does come there.

Q You say that you were a steady member of Mr. Battista's gang?

A Yes.

Q When Mr. Battista's gang works you work?

A Yes, sir.

Q You were called a number 1 hold man; that is the number 1 gang?

A Yes,sir.

Q But that doesn't mean that you always work in the number 1 hold of any particular vessel?

MR. LORY: Your Honor, I suggest that Mr. Reid, instead of giving testimony ask a question.

THE COURT: I think the question might be better phrased.

Q The gangs are rotated, are they not, from 1, 2, 3, 4 and 5 to equalize the time, the earnings of the men, isn't that so?

A Yes.

Q To get back to the point, the question I asked you a moment ago, give me a definite answer if you can. On prior occasions had you worked as a winch man on the Hellenic Destiny at number 5 hatch?

A You mean before I was hurt?

Q Yes.

A On that occasion?

Q No, not on the time that this vessel was here at the particular time of your accident, but when the vessel was here in Brooklyn over on prior occasions.

A I can't say no. It may be that I did work there.

Q Well, is the best of your recollection that you did work there?

A On that ship?

Q Yes.

A Sure I did.

Q When you took your tour as a winch man you also took your tour as a gangway man, isn't that so?

A Yes.

Q When you worked as a gangway man on previous occasions did you ever give signals from the after deck on the side of the ship?

MR. LORY: If your Honor please, we are still not at number 5 hatch.

MR. REID: That's all we are talking about.

THE COURT: I think you better put that in.

Q At number 5 hatch.

A I don't understand your question too well.

MR. REID: Could we have this marked, please?

THE COURT: Let me just make an inquiry and maybe we can clarify this.

As I understand it, Mr. Napoli, on occasions before January 9, 1974, you worked at number 5 hatch aboard the Hellenic Destiny, is that right?

THE WITNESS: I didn't work there, I worked forward.

THE COURT: No, at any time in 1972 or '73 -- in other words, any time before the day it happened.

THE WITNESS: It may be that I did work there but I don't remember for sure, your Honor.

(Defendant's Exhibit B marked for identification.)

Q To the best of your recollection did you work there?

A The gangs take their turns and I can't actually remember because I don't know for sure. The hatch boss would know that better than I do.

MR. LORY: I move to strike.

THE COURT: It is not responsive, the last part. We will strike the very last sentence.

Q What was immediately after the hatch coaming of the square of the hatch on the main deck? Say the table is the hatch coaming around the hatch and this table is the hatch where the cargo is.

MR. LORY: What hatch are we talking about?

MR. REID: Number 5. We are not talking about anything else. Please.

THE COURT: All right, I just want to mention something to the witness. Mr. Napoli, from now on unless somebody tells you something else, we are going to be talking about the number 5 hatch on the Hellenic Destiny, do you understand that?

THE WITNESS: Yes, your Honor.

Q Getting back to this small table, it represents the square of the hatch and the sides, the four sides is the hatch coaming. Say that the forward side is toward the front of the ship and this, the after side, is toward the back of the ship. This right-hand side over here is the inshore side and she was right-hand side to the pier, was she not?

A Yes.

Q My left-hand side over here is the offshore side.

A Exactly.

Q Now, what is immediately behind the hatch coaming at the after end of the square of the hatch?

A There is a hatch coaming and then you have something like a room which encloses the whole aft end of the vessel.

Q How much distance is there between the after part

of the hatch coaming and this room that you are talking about?

A I don't know.

Q Is it more than three feet or five feet?

A I don't know. I don't know because I don't go there.

Q Adjacent to the hatch coaming on the right-hand side there was a steam pipe covering walkway, was there not?

A It might have been a water pipe which was actually up against the coaming of the hatch.

Q Isn't there a walkway across these water pipes or steam pipes alongside the hatch coaming?

A No.

Q You are sure about that?

A I think so.

Q Well, I am not asking you to think or guess, I am asking you to the best of your recollection.

A I do not remember.

Q In connection with this after room that you spoke about a moment ago, that after room has some stairs leading up to it, doesn't it? After the hatch.

A I don't know that.

Q Well, there are certain round pieces of metal or bits that the crew uses to tie up the vessel up on this

rgh 60 Napoli-cross

after house, is there not?

A But that's further in, quite a bit further in.

Q Yes, but it is on the after house on the inshore side?

A Yes, even further in than that.

Q Well, isn't it right next to the skin of the ship, right against the side where they put the mooring lines from the dock to the ship?

A I don't know. I am working on the drums. I don't know what's over there.

Q I am going to call your attention to your deposition on page 18 on line number 15.

"Q Was there any cargo stowed aft or the square of the hatch and the bulkhead of number 5?

"A No. There was a rise there which was used for the lines where the sailors went to tie up the lines."

A Where I fell. Where you are talking about I don't know.

Q Didn't you tell me that the rise is where this room is after the hatch?

A Yes,but I don't know what's behind that.

Q All right, do you remember the question being asked you and did you give that answer?

A I do not remember that question nor answer.

MR. REID: If your Honor please, at this point I would like to read from this deposition on page 18, line 22, commencing with the question.

THE COURT: Ladies and gentlemen, remember I said that there might be examinations before trial or depositions which would be referred to. Mr. Reid is about to read from the deposition or examination before trial of Mr. Napoli. You may proceed, sir.

MR. LORY: If your Honor please, just mere reading of the deposition is subjective to us. If there is something specific that he thinks the witness earlier stated that was inconsistent with what he testified to, this would be the proper use of the deposition, but merely reading it verbatim is objected to.

THE COURT: I would take exception to that. I would suggest there are two uses at least and the only point that I would ask you at this time is whether there is any contest about the regularity of the deposition, to wit, that it was taken, that it was transcribed and that it was executed?

MR. LORY: No, there is not.

THE COURT: If that's the case I think it would be proper for Mr. Reid to inquire of the witness by question and answer to impeach him, but also I suggest that he can

read from the deposition of an adverse party, which is what Mr. Napoli is, under the provisions of Rule -- I think it is 26, but I am just looking for the specific portion of that rather lengthy rule.

MR. LORY: I pointed out to your Honor that this rule does not provide for this witness' use while this witness is on the stand.

THE COURT: Bear with me and I will make the inquiry on the subject.

I would refer you to Rule 32. I was in error before. I read you 32A2. "The deposition of a party"-- and I will leave out some irrelevant material "may be used by an adverse party for amy purpose."

I show you 32.

MR. LORY: You don't have to, your Honor. This is my understanding of the rule, but the rule does not provide for a mere reading of the transcript to the jury. otherwise you might just as well offer the transcript into evidence and the court must admit it and I disagree with this as being the intent or the meaning of the rule.

THE COURT: As far as I am concerned, and you may be correct, but I am going to rule on this, he can read any portion of the deposition to the jury and, for purposes of completeness, you can then rise and read any other portion

of the deposition to the jury.

MR. LORY: I would take exception to this procedure as not being within my understanding of the provision of Rule 32 and the use of the transcript.

THE COURT: The language here seems quite clear. Do you say that the deposition must be marked as an exhibit? It says, and I will read it again, 32A2. "The deposition of a party" -- and I am skipping about managing agents and the like -- "may be used by an adverse party for any purpose." So we are past the point, of course, of impeachment. Now you are saying that the only way he can use it is to offer it into evidence, is that it?

MR. LORY: No, I am saying he cannot offer it into evidence nor may he just select a deposition and pick out pages and read them without addressing the questions to the witness as to whether he was asked this question or gave this answer.

MR. REID: If the Court pleases, my understanding of the rule is that the rule says I can use the deposition for any purpose including impeachment.

MR. LORY: It doesn't say you can read it into the record. That's my objection.

MR. REID: Any purpose.

THE COURT: Well, if it were to come in under

no other rule of evidence previously discussed by us it would come in under Rule 803, subparagraph 24 I would think. If you could show me any support for your contention that he cannot read from the conceded deposition of an adverse party in this lawsuit I will hear you.

MR. LORY: Your Honor at the moment I cannot. I agree and I have agreed with the court before that the transcript may be used by any party for any purpose. However, this does not include the mere reading of the transcript to the court and the jury and into the record.

THE COURT: We will take a short recess to enable you to check further with your source materials. It is 3:30. We will take a ten-minute recess. The jury is directed not to discuss the case among each other and to keep an open mind on all facets of the case until the case has been concluded. The jury is excused.

(Recess)

THE COURT: Ladies and gentlemen, we will resume now. We are on the cross-examination of Mr. Napoli. Gentlemen, I have ruled on the matter which we discussed while the jury was out. I would suggest consistent with that ruling that you mark the transcript of Mr. Napoli's deposition as Defendant's C for identification.

(Defendant's Exhibit C marked for identification.)

THE COURT: Now, if you identify the page and line which you are reading from you may proceed.

MR. REID: Yes, your Honor. On page 18, commencing at line number 19.

"Q Was there anything put on top of these drums to walk on?

"A There was plywood.

"Q Was that put up over the top of all the drums that you have told us about?

"A No. There was a piece, one after the other, just enough to walk on."

Q Who was your winch man at the time of your accident?

A Salvatore.

Q Is his last name Mignano?

A Yes.

Q He has been sitting in the courtroom here all morning?

A Yes.

Q And you have been talking to him about your case today?

A Yes.

Q You talked to Mr. Battista--

A Yes.

Q --about your case today?

A Yes.

Q And he was one of the gentlemen who was sitting back here all day up until a few minutes ago?

A Yes.

Q Are you a friend of Mr. Mignano?

A Just friends when we work. That way, that's all.

Q How long have you worked with him?

A From the time I went into the bank.

Q How much snow was there on this plywood that you were working on or walking on?

A There was just a little snow.

Q Do you remember this question and this answer on page 23.

THE COURT: Where you asked the question which Mr. Reid will now read and did you give the answer which he will read.

Q Commencing at line number 11.

"Q When you turned to at 11:10 or 11:15 how much snow was on top of the drums and the plywood?

"A There was snow there."

A There was a little snow there.

THE COURT: No, just listen.

Would you read his answer.

MR. REID: There was snow there.

A Yes.

Q "Q How much snow?

"A I don't know how much, but there was snow."

A Yes.

Q Do you remember these questions being asked to you and you giving those answers?

A Yes, sir.

Q Now, wasn't it also raining that day, that morning?

A No.

Q Rain and snow?

A No. The snow was coming down very little, a little at a time around 11 o'clock.

Q I believe you have told me that none of the ship's officers gave you any orders, is that so?

A No, that's o.

Q I'm sorry?

A No.

Q Is that so?

A No, I didn't see anybody.

Q Specifically you didn't get any orders from the ship's officers?

A No.

Q Now, when you went back to number 5 did Mr. Battista

there with you?

A Yes, sir.

THE COURT: And Mr. Battista was your hatch boss, is that correct?

THE WITNESS: Yes, sir, your Honor.

Q These drums to which you refer, they were ordinary 55-gallon drums, were they not?

A Yes, sir.

Q And when they are stowed alongside one another there is always some space between the drums, is there not, because the drums are round?

A Yes, sir.

Q You could see that, could you not?

A You could not see it because the plywood was on it. When I slipped and fell I could see it.

Q When you walked down to the place where you were working, going to work, which way did you look when you were walking down?

A What do you mean when I went to work?

Q When you went to work from the midship house and walked back to number 5 hatch on the inshore side.

A I was looking towards Staten Island.

Q I see. Now, after you got back down to the number 5 did you look down to see just where you were

going to work and you were going to walk?

A I was walking on the plywood.

Q Now, when you got there by the number 5 did you look down to inspect the place where you were going to walk between the hatch coaming and the ship's rail?

MR. LORY: If your Honor please, hasn't this already been answered?

MR. REID: No.

THE COURT: I am not sure that it has been. I am going to permit him to answer.

A Yes, sir.

Q That's where you said that you saw the little bits of snow, you didn't know how much?

A There wasn't too much snow there.

Q Did you get a piece of wood or anything and take it and brush this snow off the top of the plywood?

A No. I didn't brush anything. All I did was slip on the plywood.

Q Well, did you take a piece of plywood and up end it like that and shake the snow off?

A No.

Q Did you complain to Mr. Battista about the condition of the place where you were to work?

A No.

Q Beside Mr. Battista there were some of the stevedore formen who were aboard the ship that day, were there not,while it was snowing off and on?

A No.

Q You didn't see any of the stevedore foremen?

A No.

Q I call your attention, sir, to page 20 of your deposition commencing on line 24.

"Q Was there any stevedore's ships foremen aboard ship that day?

"A Yes, sir."

A I didn't even see one of them.

Q Do you remember that question being asked you and you giving that answer?

A I only saw the hatch boss.

Q Do you remember the question being asked you and you giving that answer?

A I already answered that question. I said I only saw the hatch boss that day.

Q You were wearing a safety hat at the time you fell, were you not?

A Yes, sir.

Q That's a metal hat, is it not?

A Yes.

Q Now, you stated that when you went to the hospital they put a cast on your arm. Now, actually wasn't that a splint instead of a cast?

A No. It was actually a plastic -- a plaster cast.

Q Now, you said --

A I will bring it to you tomorrow.

Q I am talking about on January 9, 1974.

A Yes.

Q You still have the cast from January 9, 1974?

A Sure. I kept it.

Q At the time of the accident there were only two of you on the deck working and that was you and the winch operator, Mr. Mignano, isn't that so?

A Yes, sir.

Q You have no knowledge, do you, that anybody else saw you fall?

A No, there wasn't anyone.

Q You stated that when you got to the head of the pier you made a report. Was that to the timekeeper?

A Yes, the timekeeper.

Q What did you tell the timekeeper?

A I told him how the accident had happened.

Q Did you tell him that you slipped on the plywood?

A That the plywood slipped.

Q Did you tell him that you slipped on the plywood?

A No. That the plywood slipped out from under me.

Q Now, did you make any report of the accident to the ship's officers?

A No.

Q Did you see any of the ship's officers working around on the deck?

MR. LORY: If your Honor please, we have been over the ship's officer bit three times already.

THE COURT: Yes. He indicated in one way or another he didn't get any orders from the ship's officers, he didn't see them. The only person to have been present at the time of the occurrence was the winch man, Mr. Mignano. I do believe that has been covered.

MR. REID: Very well, your Honor. I will skip that, then.

Q Now, you spoke about seeing a Dr. Koota.

A The first doctor that I saw, yes.

Q Didn't you also see a Dr. David Kleiner?

A Yes, sir.

Q And Dr. Kleiner was the doctor who discharged you in July as fit for going back to work, isn't that so?

A Koota was the one that said that I could not do anything; that the company gave him orders to send me

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A No. We secure it.

Q You have been a longshoreman for 30 some-odd years?

A Yes. I started in 1939.

Q You worked aboard ship in the open whether in summer, spring, winter and fall?

A Yes.

Q And the deck man's job, he is out on deck in the open, is he not?

A Yes. When it is plenty cold.

Q And you have worked in snow before?

A Yes, sir.

Q And you worked on a deck which had snow?

A Yes.

Q And you worked on plywood which had snow?

A On board this ship, yes.

Q On other ships, too?

A Yes, but before we went on board the sailors would clean it up.

MR. REID: I move to strike his answer.

THE COURT: Strike it. Not responsive.

MR. REID: No further questions.

REDIRECT EXAMINATION

BY MR. LORY:

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MR. REID: Yes.

THE COURT: I will sustain a form objection.

Q Mr. Napoli, was any sand available to you for use aboard the Hellenic Destiny?

MR. REID: The same objection, your Honor.

THE COURT: Yes, I think if you go back one step to cover the matter you can come forward to this step, but you skipped one step.

Q Was there anything available to you, Mr. Napoli, to spread over the snow?

MR. REID: I object to that as being ambiguous.

THE COURT: Yes, sustained.

You can inquire on the subject, but go back one step because essentially his objection, beyond the leading one which I sustained, it was that it was assuming a fact not in evidence. So if you just would go back one step I think you can cover it.

Q Was any sand provided to the longshoremen to use on the deck?

A I didn't see any.

Q Did anybody ever tell you that any sand was available to use on the deck?

MR. REID: Objection, your Honor, as leading and suggestive.

THE COURT: Yes, that's a form objection. Sustained. You have now laid your foundation. He is not objecting to that. If you will just change it from a question that would require a yes or no answer to a proper question since the witness is your witness.

Q Did anyone ever tell you where any sand was located?

MR. REID: Same objection.

THE COURT: I will allow it.

A No.

MR. LORY: I have nothing further.

RECROSS EXAMINATION

BY MR. REID:

Q Did you ever ask for any sand?

A No.

Q Getting back to Dr. Guarino and Dr. Campbell, which of the two saw you the most?

A I used to see them almost the same amount of time because when sometimes I would go one wasn't there and two days later another fellow was there.

MR. REID: No further questions, your Honor.

THE COURT: Mr. Lory?

MR. LORY: I am finished.

THE COURT: You may step down, Mr. Napoli.

MR. LORY: If I may, if your Honor please, have to

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July 29, 1975

F R A N K B A T T I S T A, called as a witness by the plaintiff, being first duly sworn, testified as follows:

THE COURT: Mr. Battista, when you are testifying please keep your voice up so that everybody in the court room, all the jurors and the lawyers, can hear you. All right?

THE WITNESS: Okay.

THE COURT: You may proceed, Mr. Lory.

MR. LORY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LORY:

Q Mr. Battista, what is your occupation?

A Longshoreman.

Q And How long have you been a longshoreman?

A About 30 years, 35 years.

MR. REID: Could you speak up? I have difficulty hearing you.

Q The lawyer is asking you, Mr. Battista, to speak up

THE COURT: Like you are being the hatch boss and you are telling those fellows what to do. Talk like you do then.

Q By whom are you employed, Mr. Battista?

A Right now I am employed from Hellenic Line.

Q How long have you been working for Hellenic Lines?

A Since they came on the 57th Street pier. It is abou 15 years ago.

Q What is your specific job with Hellenic Li s apart from your job as a longshoreman?

A I am a hatch foreman.

Q So you can talk like a hatch boss like the Judge said.

A Yes, but my voice, I got a cold yesterday.

Q How long have you been a hatch boss?

A About seven years.

Q When you were a hatch boss -- what does that mean?

A That means that you are supposed to take orders and give orders.

Q Who do you take orders from?

A From the ship's foreman.

Q Who do you give orders to?

A My men.

Q How many men do you give orders to?

A Sometimes 17, sometimes 20.

Q Is that known as a longshoreman gang?

A Right.

Q Now, what is the makeup of a longshoreman gang? Do you have various job categories in the gang?

A Yes.

Q What are those job categories?

A They got a deckman, a holdman and dockman.

Q What does a deckman have to do?

A A deckman, they go in, rig her up, the booms, put them in position to load and unload and get the gang ready to work.

Q Is a gangwayman also a deckman?

A A deckman, a winchman and reliefman.

Q So a deckman works at three jobs, being a winchman, being a gangwayman and at times he is the reliefman?

A Right.

Q How do you rig a boom? When you come on a ship for the first time do you find the booms in the cradle or do you find them out of the cradle?

A The boom is out of the cradle. The crew is supposed to take them out.

Q Now, the cradle is something that is shaped like a Y that holds the boom in position when the ship is at sea, isn that so?

A Right.

Q When the ship comes in the crew takes the booms --

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the manilla guy that you told us about and you have got the preventer guy.

A Right.

Q And this is what holds the booms in position?

A Right.

Q And this is true aboard the Hellenic Destiny?

A Right.

Q Now, I call your attention to January 9 of 1974. Were you working aboard the Hellenic Destiny on that day?

A Right.

Q Do you remember that day with respect to what type of weather we had?

A It was bad weather and snow.

Q Do you remember what time you arrived at Pier 57 that day?

A Usually about 7:30.

Q And did you receive orders to work at a particular hatch?

A The number 5 hatch.

Q Is that hatch aft of the mid-ship house?

A This is aft. The last hatch on the ship.

Q Was the number 4 hatch in fron tof that?

A Right.

Q And the house where the sailors live and bridge is,

was that in front of that?

A In front of number 4.

Q How many sets of booms were located at the number 5 hatch of the Hellenic Destiny?

A Two.

Q Did you have winches forward and aft?

A No, only forward.

Q Only forward. So when you say two, do you mean one on the in-shore side and one on the off-shore side?

A Right.

Q Did you receive orders as to what you were to do that day in number 5 hatch, loading or discharging?

A We were supposed to discharge.

Q All right, now, did you go aboard the ship at 8:00?

A We went aboard the ship about five after.

Q And did you go to the number 5 hatch at that time?

A At that particular time there was a snow and we no went to number 5.

Q Where did you go?

A We stayed in the mess hall, in the galley, whatever they call it, under the bridge.

Q How long did you stay there?

A Approximately three hours.

MR. REID: Would you keep your voice up? I can't he you.

MR. LORY: The last answer was approximately three hours.

Q WEre you paid for those three hours?

A Yes, sir.

Q Did there come a time that you were told to go somewhere?

A Yes.

Q What time was that?

A About 11:00.

Q Where were you told to go?

A I was told to go work on number 5 hatch.

Q Did there come a time when you left the mid-ship house and started walking on the deck of the ship?

A Right.

Q When you stepped out of the mid-ship house what did you see on the deck of the ship,if you saw anything?

A I saw drums, steel drums between 4 and 5.

Q Now, you told us it was snowing. Was there any snow on the dock?

A Yes. The crew did clean a little bit, but it was still snow.

MR. REID: I am sorry, I can't hear you.

A The crew did some cleaning and there was still some snow on deck.

Q Did they clean the whole deck or only part of the deck?

A Part of the deck.

Q How much of an area was clean?

A Just the path.

Q Would it be fair to say the width of a shovel?

A No, I would say two feet.

Q Now, this two foot path that you came out on to after you left the mid-ship house, where did that lead to?

A It leads on three steps to go on the steel drums to go into number 5 hatch.

Q Now, you told us that there was deck cargo of steel drums from number 4 extending all the way back to number 5, is that correct?

A All the way back to number 5.

Q Now, when you climbed these steps did you have occasion to look at these drums, the top of these drums?

A Some of them were covered with snow and some, they were not covered with snow.

Q Was there anything on these drums to walk on?

A There was some plywood.

Q This path that you said was made from the mid-ship house to where the steps were, was this also a path on top of the plywood?

A Yes.

Q From where did this path begin on top of the plywood where the snow had been removed to where did it end?

A All the way back.

Q All the way back to the far end of number 5?

A All the way back to the after end of number 5.

Q Did you go back to number 5 hatch?

A I went as far as half-way.

Q When you say half-way, where did that bring you?

A It bring me half-way to the hatch, to the opening of the hatch.

Q Were you further aft than the forward edge of the coaming of that hatch?

A Yes, the forward part of the coaming of the hatch.

Q Did you go beyond that or just at the forward part?

A I stayed forward.

Q Are you familiar, Mr. Battista, with the duties of the gangwaymen?

A Yes.

Q What does the gangwayman have to do?

A He is supposed to give a signal to the winchman and he also is supposed to say watch out or get out of the way, be careful, go slow, go fast, all those with talk and signal.

Q When you say signal, he makes hand signals to the

winchman with respect to the movement of cargo?

A Right.

Q Where does the gangwayman usually station himself in the Port of New York?

A The gangwayman is supposed to face the winchman. Out of the way from the cargo, but face the winchman.

Q When you say out of the way of the cargo, do you mean out of the plane of the draft, the path that the draft travels?

A Right.

Q Now, was there any provision made for the gangwayman stationed on the Hellenic Destiny on January 9, 1974 when you arrived there?

A Not that I know.

MR. REID: I didn't hear the answer.

THE COURT: Not that I know was his answer.

Q How long did you stay at the number 5 hatch?

A About 20 minutes.

Q Did the rest of the members of the gang come with you

A The rest of the gang came with me.

Q When you arrived there were the booms in position?

A The booms, they were in position.

Q Were the already rigged?

A Already rigged.

Q Was hatch number 5, the square of the coaming, was

that opened or closed?

A It was opened.

Q At this time what was the weather?

A It was not snowing at that time.

Q Then you stayed there for a period of time?

A Me? I stayed there only about a few minutes.

Q While you were there did they start working the cargo

A I was waiting for the men to go down the hold.

Q While you were there was any cargo moved?

A I don't remember exactly if they took any draft or not.

Q Who was the gangwayman on that day ?

A On that day it was Tony Napoli.

Q Where was his staiton with respect to the work at the number 5 hatch?

A It was on the after part of the hatch number 5.

Q Was there open deck there for him to work?

A It was the drums on deck.

Q Did he have to work on top of the drums?

A He have to stay on top of the drums. That's the only way.

Q Was there anything there for him to walk on on top of these drums?

A There was some plywood.

Q Was there anything on this plywood at 11:00 when you got to number 5 hatch?

A On those -- way back plywood.

Q Yes. Are those known as walking boards?

A They were plywood that goes from number 4 all the way back to number 5.

Q Was there any more plywood for Mr. Napoli to walk on to go from the rail of the ship to the coaming?

A I don't know. I don't know if there were any plywood or not over there.

Q All right, there came a time when you left that area, isn't that so?

A Right.

Q Where did you go?

A I went on the dock.

Q Did you job duties require you to go to the dock?

A Yes, I got more men on the dock.

Q And you went to the dock, is that so?

A Yes.

Q Now, were you called to the ship at some time thereafter?

A They called me on the ship right after then, one of my men got hut.

Q Who was that man who got hurt?

A Tony Napoli.

Q When you arrived at the hatch -- going back a bit -- and you were at number 5 hatch, for the period of time that you stayed there did you or any of your men lay any plywood burton from the rail to the coaming for the gangwayman to walk on?

A I don't know that.

Q Well, did you or didn't you.

A No.

Q You did not?

A I was not there.

Q The gangwayman used whatever was there, is that what you are saying?

A I was not there to see if he used them or not.

Q You came back when you got a call that Mr. Napoli got hurt, isn't that so?

A Right.

Q Did you go back to the number 5 hatch?

A Yes.

Q Did you go back the way you came off the ship?

A Yes.

Q Where was the gangway, was that near the mid-ship house?

A No. It was toward the after.

Q Was the gangway near the number 4 hatch?

A No.

Q Was the gangway more by where the house is, the mid-ship house?

A The mid-ship house? No. It was way by number 5 where it is supposed to be.

Q I am not talking about the gangwayman, I am talking aobut the gangway. How did you go aboard the ship?

A The same place, mid-ship.

Q So you came up the gangway, as I understand you, and correct me if I am wrong, through the mid-ship house and out through the same passway that you had used before to get to the number 5 hatch?

A Right.

Q Did you go to number 5 hatch?

A Yes.

Q Did you have to get back up on top of the deck to get there?

A Yes.

MR. REID: He is leading the witness. I object.

THE COURT: I agree.

Q When you got there what did you see?

A I saw Mr. Napoli laying on the floor.

Q What was he on?

A He was down below on a couple of steel columns which

they call a bit. That's where he was down in.

Q Where were these bits located with respect to the cargo of steel drums?

A On the after part of the number 5 hatch.

Q What was around these bits that you mentioned?

A Steel drums.

Q Are you saying, Mr. Battista, that the bits were there and all around these bits were steel drums?

A On one side. On the other side there was the side of the ship.

Q Going from the rail of the ship to [illegible] the coaming, would it be fair to say that you had the bits near the rail --

A Right.

Q And completely around the bits you now have all these steel drums?

A Right.

Q Where did you say Mr. Napoli was at this particular time?

A He was half-way down there.

Q What did you do then?

A We picked him up and we give him an empty pallet.

Q Did you talk to Mr. Napoli?

A I tried to talk. I said how you feel and he said "I am all right, but my leg, my arm."

Next?

Q Yes.

A We stood in fron of the office.

Q How long did you stay there?

A Until the ambulance came.

Q After the ambulance came what did you do?

A I went to the time keeper and told him that he got hurt.

Q Did there come a time when you went back to the ship?

A No.

Q About what time did you recieve the call that Mr. Napoli was hurt?

A It was about 20 minutes after 11.

Q Did there come a time when you went back to the ship to continue to work?

A We no went back to the ship?

Q What happened that you didn't go back to the ship?

A It started to snow.

Q And what happened then?

A We waited until 12:00 and they sent the gangs home.

Q Did the work at number 5 hatch continue after Mr. Nap was removed from the ship?

A No.

Q So the record is clear, Mr. Battista, do you know who put the plywood down over these drums at the number 5 hatch?

A The crew -- from number 4 -- they start to put the plywood from number 4 all the way over to number 5.

THE COURT: Who?

THE WITNESS: The crew of the ship.

THE COURT: Do you know that of your own knowledge? Did you see it?

THE WITNESS: I see.

THE COURT: You saw them putting it down?

THE WITNESS: I saw them putting it down. They start from number 4 to number 5.

Q Mr. Battista, to something else for the moment, were you born in the United States?

A Yes.

Q Did you go to school over here?

A No.

Q How far did you go in school? You didn't go to school here at all?

A No school.

Q When did you start working?

A When I was 16.

Q Can you read and write English?

A A little bit.

Q Do you read a newspaper?

A No. Italian paper, sports.

Q So the record is clear, Mr. Battista, you had no formal education in the United States?

A No school.

Q Did somebody come to see you regarding this accident before you came here today?

A Yes.

Q Do you know who that person was?

A Yes. That man over there.

MR. LORY: For the record, Mr. Robert Lynch.

THE COURT: Indicating a spectator who has been identifyed as Mr. Robert Lynch.

Q When did you see Mr. Lynch?

A About three months, a couple of months after Mr. Napoli got hurt.

Q Did you have a conversation with him regarding this accident?

A Yes.

Q And did he ask you questions and did you tell him what knowledge you had of the accident?

A Yes.

Q Did he do something while he was in your presence?

A Yes.

Was this conversation that you had with him in English or some other language?

A In English and in Italian, mixed.

Q Did you tell him what you knew about this accident?

A Yes.

Q What did you tell him?

A I told him what I saw.

Q What you told him, was it different from what you told us here today?

MR. REID: I object, your Honor.

THE COURT: Yes, sustained.

Q Did you tell him that the crew had put down the plywood?

A No.

MR. REID: Your Honor --

THE COURT: He has answered the question no and I am going to let it stand.

MR. LORY: I didn't hear an answer.

THE COURT: I assume the jury did, too.

Q Did you tell him that the crew had put down the plywood? I didn't hear an answer.

A The crew had put the plywood down?

Q Yes.

THE COURT: Did you tell that to Mr. Lynch?

THE WITNESS: He asked me if there was any plywood over there and I said yes. That's what he asked me. He not told me if the crew put them or the crew no put it. He only asked me if it was plywood there and I said yes, there was ply wood.

THE COURT: In other words, what you are saying is that he didn't ask you who put it down?

THE WITNESS: He don't ask me who put it down.

Q Did Mr. Lynch write out on some papers something?

A Yes.

Q Did he ask you to read it?

A Yes.

Q And did you?

A Yes.

Q What language was that paper written in?

A In English.

Q Did you sign it?

A Yes.

Q Did you read it good?

A Whatever. The best way I understood.

Q When you signed it did you believe that Mr. Lynch had put down what you told him?

A He should --

MR. REID: I object, your Honor.

THE COURT: Sustained.

A He should put --

THE COURT: Sustained.

Q Did Mr. Lynch say who sent him to see you?

A No.

Q Did you ask him?

A No.

Q So the record is clear, Mr. Battista, Mr. Lynch did not ask you and you did not tell him who put the plywood down, is that what you are saying?

A Right.

Q All you were asked was whether there was in fact plywood there?

A Yes.

MR. LORY: Mr. Reid, you may examine.

CROSS EXAMINATION

BY MR. REID:

Q Mr. Battista, assume this green pad is the number 5 hatch and this red pad is the number 4 hatch and this is the rail of the ship (indicating). Did you say that there was plywood on the drums from the forward corner of number 5?

A From number 4 to number 5 where --

Q Where did it stop at number 5?

A All the way back.

All the way to the end?

A. All the way to the end.

Q Now, you said that the crew had come out there and had cleaned a path across the plywood?

A The crew, he put the plywood on top the drums.

THE COURT: That was not the question that you were asked and I will strike it as not responsive. The question that you were asked is do you know of your own knowledge whether or not the crew cleaned off or cleared the plywood.

THE WITNESS: The answer is when the men -- my men that was supposed to go work the number 5 hatch, a few men from the crew, they come out, they took the plywood, they shake the snow and then put them back on the drums and they made a path from number 4 to number 5.

Q So that there was no snow on the plywood, they shook it off?

A They shook it off.

Q As a hatch boss you have occasion to read things in the English language, do you not?

A I don't get it. Repeat it.

Q There are certain reports that you have to read in connection with your work.

A I don't understand the question.

Q Well, is there anything handed to you to read on

over at the pier?

A No. It's always by voice.

Q So you read nothing during the course of your work?

A Read?

Q Yes.

A No.

Q Do you read anything at all in the English language?

A Yes. Some things. Small words I understand. Big words I don't understand.

Q You understand the word "plywood", don't you?

A Plywood. I do some work with plywood.

Q You understand the word "but"?

A Yes.

Q "On"?

A Yes.

Q "The"?

A Yes.

Q And you follow the sports in the newspapers?

A Yes.

Q Do you read the sports column?

A No.

Q Well, do you read anything at all concerning the sport in the newspapers?

A I read pictures. I read part of the pictures, some

words I understand and I read and some I skip.

Q Do you stop at the counter on the way home and pick up a Daily News and take it home and read it?

A. Sometimes I pick up a newspaper just to see something, pictures.

Q You just look at the pictures?

A Sometimes.

Q Would it be fair to say, Mr. Battista, that you don't know the English alphabet?

A I know the English alphabet. It is like the Italian alphabet.

Q Do you subscribe to any magazines?

A I beg your pardon? I don't understand the question.

Q Do you subscribe to any magazines?

A No.

Q Not at all?

A No magazines.

Q Have you ever read a book in the English language?

A No.

Q You never have?

A No.

Q Not even one chapter?

A No.

Q Have you ever seen me before yesterday?

A No.

Q We were sitting over here in this corner at a recess and di I hand you a piece of paper, Mr. Battista, and I said this is a statement that you had given and I think you had better read it?

A Yes.

Q You read the statement, did you not?

A I looked at the statement. I no say that I read. I look at the statement.

THE COURT: Did you tell Mr. Read "I don't understan what's here on this paper"?

THE WITNESS: No.

Q And then after you looked at it you gave it back to me, did you not?

A Right.

MR. REID: Would you please mark this.

THE COURT: That will be defendant's E for identifica tion.

(Defendant's Exhibit E marked for identification.)

Q Mr. Battista, is this your signature?

A Yes. That's my signature.

Q That is the piece of paper I showed you yesterday?

A You showed me another paper.

Q I showed you this paper also and you said, "let me

see what's in writing"?

A Yes.

Q And this is the one.

A You showed me this paper and another paper.

Q One was typewritten and one was this?

A Yes.

Q This is the paper that Mr. Lynch --

A Wrote, yes.

Q And you signed?

A I signed.

Q You say here --

THE COURT: Don't read it yet.

Q Did you recall what you had stated in that statement before I showed it to you?

A What I said? If you read it to me, yes.

Q This was the first time you have seen this statement since Mr. Lynch took it from you?

A No. I saw it another time.

Q You mean since the time you signed it in Mr. Lynch's presence and the time I showed it to you yesterday you hadn't seen this statement?

A I saw. They came over my house.

Q Yes. Oh, he came over to your house when he served a subpoena on you?

A Right.

Q And he showed you the statement again?

A He showed me like that.

Q And you read it again?

A And I read it. He showed it to me and I said --

Q Mr. Lynch speaks Italian, doesn't he?

A What?

Q Mr. Lynch speaks Italian, doesn't he?

A Yes.

Q Andyou conversed with him in Italian and English?

A We talked Italian and English.

Q Let me read this to you.

MR. LORY: May I know what he is going to read, your Honor?

THE COURT: Yes. If you are preparing to read from a document not in evidence I will have to sustain an objection.

MR. REID: I will offer this in evidence, then, your Honor.

MR. LORY: I will object.

MR. REID: He has identified it.

THE COURT: Do you want voir dire?

MR. LORY: I think we have to have a little more than what we have.

THE COURT: Do you want a voir dire?

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VOIR DIRE EXAMINATION

BY MR. LORY:

Q Mr. Battista, do you remember where you were when you gave this statement?

A I was on the pier.

Q Were you called from the job?

A Yes.

Q Where were you called to?

A In the office, the timekeeper's office.

Q What company?

A Hellenic Lines.

Q Were you working for Hellenic Lines at this time?

A Yes.

Q Where were you called from?

A From the ship.

Q Did you have a gang working?

A Right.

Q Did you read this statement before you signed it?

A He read it to me.

THE COURT: He read it to you?

THE WITNESS: He read it to me.

Q In what language did he read it to you?

A In English.

Q After he read it to you what did you do?

I signed.

How much time altogether was spent talking to Mr. Lynch, writing up the statement and signing it before you went back to work?

A About three-quarters of an hour.

Q By the way, did Mr. Lynch give you a copy of this statement --

A No.

Q On the day that it was taken?

A No.

Q I take it the only time you saw a copy of the statemenet again is when he served you with a subpoena just this last week?

A That's all.

MR. LORY: If your Honor please, what I have to say at this particular point may better be said out of the presence of the jury.

THE COURT: Step to the side bar.

(At the side bar.)

MR. LORY: If your Honor please, the witness has indicated that he is called off the job, interviewed at the Hellenic Lines' office, his employer, asked certain information the information supposedly is recorded, it is told to him that what he said is put down on this statement and he is asked to

sign it and he is sent back to the job.

I submit, your Honor, the statement is taken under duress and whether this is for a jury to consider or not is up to your Honor, but at this particular point I feel the statement should not be admitted.

THE COURT: Mr. Reid?

MR. REID: I think I layed a sufficient foundation for the admission of this statement.

THE COURT: With what was added, frankly, in the last few minutes I would think that this statement, which the witness has now testified was read to him and after it was read to him he signed it is properly admissible at this time. Accordingly your objection is overruled.

MR. LORY: I except.

(In open court)

THE COURT: Defendant's Exhibit E is received and, Ms. Kruger, would you mark it.

(Defendant's Exhibit E is received in evidence.)

MR. REID: If the Court please, I would like to read to the jury part of this statement.

THE COURT: You may. If you choose to read a part of it then I will permit Mr. Lory immediately following to read the portions you didn't.

MR. REID: In the interests of saving time I will rea

it all.

THE COURT: All right.

MR. REID: "My name is Frank Battista and I live at 19-37 60th Street, Brooklyn, New York. I have have worked at the 57th Street Pier for about 25 years as a hatch boss. On or about January 9, 1974 I recall that my gangwayman, Anthony Napoli, received an injury aboard one of the Hellenic Lines' ships. I did not see Anthony Napoli receive the injury, but I do know that he was working under dangerous conditions because it was snowing at the time of his injury. Mr. Napoli slipped on a piece of plywood which he had layed down as a walkway in order to give signals to the winchman. The plywood was placed on top of metal drums which were covered with snow and the plywood board also got covered with snow. It was snowing for most of the day while we were working the ship and the snow would melt, becoming very slushy and slippery. I have read the above and it is true. Frank Battista, November 25, 1974. Witness, R. Lynch."

CONTINUED CROSS EXAMINATION

BY MR. REID:

Q Now, Mr. Battista, you spoke about the ship's foreman. Are you talking about the stevedore foreman who comes down aboard the ship; that's your boss, isn't it?

A Yes.

MR. REID: I have no further questions of this witness.

REDIRECT EXAMINATION

BY MR. LORY:

Q Mr. Battista, who gives the stevedore foreman his orders?

A Who gives the orders?

Q You get the orders as a hatch boss from your stevedore foreman?

A Right.

Q Does anybody give the stevedore foreman orders with respect to what is going to happen with the ship?

A I think the company give the orders. The supervisior of the company give the orders or the superintendant of the pier gives the orders.

Q Mr. Battista, do you know of your own knowledge whether anybody from the ship talks to the stevedore foreman?

A No.

Q When a ship comes in is there a cargo stowage plan?

A Yes.

Q Is this cargo stowage plan given to the stevedore foreman?

A Yes.

Q Who gives it to the stevedore foreman?

A The ship's mate.

MR. LORY: Thank you.

THE COURT: Thank you very much, Mr. Battista. You are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen --

MR. REID: Just one more question, your Honor, befor he leaves.

THE COURT: All right, Mr. Battista, would you retur for just one moment. Mr. Reid said he had one more question.

F R A N K B A T T I S T A, resumed.

FURTHER RECROSS EXAMINATION

BY MR. REID:

Q You worked with Mr. Napoli for quite some time, have you not?

A I worked with Napoli about two years.

Q And you converse with him every day when you work?

A When you work, yes.

Q And you have become quite friendly, have you not? Maybe not socially, but you are friendly businesswise?

A Only when we work.

Q And you would consider him a friend of your's, would you not?

MR. LORY: Objection, your Honor.

A Well, everybody is friends on the job.

MR. REID: Okay.

THE COURT: Thank you, Mr. Battista.

(Witness excused.)

THE COURT: We will recess at this time. Ladies and gentlemen, as you leave the usual admonition will accompany you. Please do not discuss this case with anyone between now and the time you return tomorrow morning. In the event you learn about this case from any source outside of the courtroom you are directed to report the matter to me at once. Please keep an open mind on all facets of the case until the case has been completed and given to you following my charge.

The jury is excused. You are directed to return to continue hearing this case tomorrow morning at 10:00 a.m. Good evening.

(Adjourned at 10:00 a.m., July 30, 1975.)

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ANTHONY NAPOLI
v.
HELLENIC LINES, LTD.

July 30, 1975,
10 A.M.

(Trial resumed)

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(In open court, jury not present.)

THE COURT: Good morning, gentlemen. Mr.Lory?

MR. LORY: Ready to proceed.

MR. REID: Ready to proceed. These are the diagrams. I may be using them with this witness. Would you take a look at them. I think you will see there is really no change between the two.

THE COURT: You have furnished Mr. Lory, as I understand it, with some cargo stowage plans. You have a large plan, somewhat unwieldly in size, which relates to the Hellenic Destiny.

MR. REID: It is the general arrangement plan, your Honor.

THE COURT: Very well. Then I understand you have a smaller plan which you indicated was the general arrangement for another vessel, a sister ship.

MR. REID: Yes.

MR. LORY: Does it go to dimensions or just the general layout?

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MR. REID: The general layout. The scale is right here and it is just a mathematical computation.

THE COURT: It looks all right to me.

MR. REID: My next question is do you have any objection if we put this in evidence for the edification of the jury? I think it will be some help to them.

THE COURT: Let Mr. Lory look at it.

MR. LORY: No objection, your Honor. The only thing, as far as that's concerned, I should like to have this cast marked.

THE COURT: We will mark it for identification. If you want to call your client back to indicate that that' the cast that was placed upon his arm at the Lutheran Hospital on January 9, 1974, and he has kept it in his custody, fine, if Mr. Reid wants that. If Mr. Reid does not object to its offer absent the witness being recalled I will leave it to him.

MR. REID: I would rather he testify, your Honor because I really don't know where this came from.

MR. LORY: I think he already testified to this court that he had the cast.

THE COURT: I recognize that he has, but I think it is only fair to Mr. Reid that he ident ify this cast as the one he testified about before.

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MR. REID: Let's mark this so we can save time.

THE COURT: This is called a capacity plan did you say?

MR. REID: Yes, it is shown right on the bottom.

THE COURT: All right, B for identification is received in evidence, no objection.

(Defendant's Exhibit B received in evidence.)

MR. LORY: I don't know how you will mark it but mark it for identification.

THE COURT: That is 5 for identification and I will call it the plaster cast.

(Plaintiff's Exhibit 5 marked for identification.)

MR. REID: As long as we are doing something like that, your Honor, I would like to ask the court to take judicial notice of the Safety and Health Regulations for longshoremen.

THE COURT: I am prepared to do that, but I am wondering, as I have listened to your presentations, whether each of you intends to rely on those regulations in this case Mr. Lory?

MR. LORY: Yes,sir.

THE COURT: You do?

MR. LORY: Yes,sir.

MR. REID: That's what he told me. That's the

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reason I wrote the letter.

THE COURT: All right, then I will take judicial notice.

MR. LORY: Mr. Reid, will you concede on the record that Hellenic Lines, Limited is a member of the New York Shipping Association?

MR. REID: I would not like to make the concession that broad, but they have access to the earnings which are reported of each longshoreman.

MR. LORY: As stevedore they belong to the New York Shipping Association, do they not, Mr. Reid?

MR. REID: I can't answer that question definitively like that. I can answer it this way, that as a stevedore they have access to the records of earnings of the longshoremen which are filed with the Association.

THE COURT: Do they pay the contract wages that the Shipping Association negotiates with the ILA?

MR. REID: I assume that they do, your Honor. I have never been asked that question before, but I assume they do.

THE COURT: Because I would imagine that would be the prime reason for Mr. Lory's request for a concession so that he can show future wages.

MR. LORY: I have something more in mind in

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I think if the fellow says I don't know about I will stop you.

MR. LORY: And if no witness appears --

THE COURT: I will let you ask the question do you know about such and such a code.

MR. LORY: Thank you.

THE COURT: All right, Plaintiff's Exhibit 5 for identification is received with no objection. Is that correct, Mr. Reid?

MR. REID: Yes, sir.

(Plaintiff's Exhibit 5 received in evidence.)

THE COURT: So this morning we have received two exhibits without objection, the capacity plan, which is Defendant's Exhibit B, and the cast, which is Plaintiff's Exhibit 5.

MR. REID: Your Honor, do you want to mark this longshore regulation in any way so it could be used in summation or for any other purpose?

THE COURT: I think it would be appropriate. I am taking judicial notice of it. It doesn't have to be marked.

MR. REID: Do you want to make it a Court Exhibit 1?

THE COURT: All right. Then it won't be ascribed to one or the other of you. We will call that Court's Exhibit 1. There is no objection, right, Mr. Lory?

MR. LORY: Right,sir.

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THE COURT: Very well.

(Court's Exhibit 1 received in evidence.)

THE COURT: Is that satisfactory, gentlemen?

MR. LORY: Yes, sir.

THE COURT: I will make that also a joint offer, if that's satisfactory.

THE COURT: Mr. Lory?

MR. LORY: Yes,sir.

THE COURT: Very well.

All right, I think we are ready now to proceed to the last matter which we had open. I understand that the next witness it may have plaintiff proposes to call is Salvatore Mignano.

MR. REID: It just occurred to me, your Honor, to further simplify the proceedings, I had used in cross-examination of the plaintiff a diagram which we prepared on examination before trial. I had it marked as an exhibit. I would like to offer that now.

THE COURT: That is A for identification, I believe.

MR. REID: Yes.

THE COURT: You show it to him and he indicated an X in a certain place. Show it to Mr. Lory and if there is no objection at this time--

MR. LORY: No objection.

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THE COURT: It is received, then.

(Defendant's Exhibit A received in evidence.)

THE COURT: Is there anything else, then, before we proceed to the next matter?

MR. REID: I don't believe so, your Honor.

THE COURT: Mr. Lory, is your next witness Mr. Mignano?

MR. LORY: Yes,sir.

THE COURT: Salvatore Mignano, please.

S A L V A T O R E M I G N A N O, called as a witness, having been duly sworn, testified as follows:

THE COURT: Mr. Lory, is the application of the plaintiff that the testimony of Mr. Mignano be presented through an interpreter in the Italian language?

MR. LORY: The witness has so requested and I have so arranged.

THE COURT: Mr. Reid, is there any objection on your part to this procedure?

MR. REID: Yes, your Honor.

THE COURT: Do you wish a voir dire on the subject?

MR. REID: Yes,sir.

THE COURT: You may proceed.

MR. REID: Without the presence of the jury?

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THE COURT: Yes. Let the record note that the jury is not present and I will have you conduct this voir dire outside of their presence.

VOIR DIRE EXAMINATION

BY MR. REID:

Q Do you pronounce your name Mignano?

A Mignano.

Q If I don't get it with the right nasal inflection please excuse me.

Where were you born, sir?

A In Italy.

Q In what year?

A 1940, August 6th.

Q When did you come to the United States?

A I come in 1966.

Q When you came to the United States how old were you?

A Excuse me?

Q How old were you?

A 26.

Q Where did you take up residence when you came to the United States?

A Where I am living?

Q Yes.

A The first time in the Bronx .

rgh 97

Q In the Bronx.

Did you make an application for American citizenshi

A Yes.

Q Did you have to go down to an Immigration hearing; they called you down and they spoke with you?

A I don't know what you mean.

Q Were you given any papers to read over and sign concerning where you were born and your declaration to become a citizen?

A Yes.

Q Was that in the English language?

A Yes.

Q You were granted your citizenship papers?

A I got them.

Q Do you drive an automobile?

A Yes.

Q Do you hold a New York State driver's license?

A Excuse me?

Q Do you hold a driver's license issued by the State of New York?

A Yes.

Q When you went down to make an application you had to fill out some papers?

A Somebody filled -- the agency filled it out

rgh 98

Q Was it in English?

A Yes.

Q Did you read it over?

A I don't read very well.

Q Well, did you read it over?

A No.

Q But you signed it?

A I just signed it.

Q Did they give you a test when you took your driver's license?

A Yes.

Q They had such words as various signs with the word stop?

A Yes.

Q And you read that?

A Sure, of course.

Q And that was in English?

A They got a sign in Italian, too, stop.

Q You mean to say that the test that you were given was one in Italian?

A No, in English.

Q Also on this test that they give you they have other signs like caution?

A I don't understand that word.

rgh 99

Q. Caution, c-a-u-t-i-o-n, caution.

A I never saw that.

Q Right of way? Was that one of the questions or signs that you saw were underneath it, right of way; do you remember that?

A No.

Q When did you get your license, how many years ago?

A In the year 1970.

Q About five years ago?

A I think so.

Q There were certain questions that they gave you in an application form which was in English, was there not?

A Yes.

Q And you had to answer those yes or no, some of them?

A Yes, but the automobile school, it was in Italian.

Q I didn't hear you, sir.

A I went to an Italian auto school and they fill it out for me.

Q Didn't they ask you whether or not you have read the above and it was true or words to that effect when you were making your application?

A I don't understand.

Q When you took the paper -- first you had to make out an application, right?

rgh 100

A Yes.

Q And the application was in the English language?

A Yes.

Q And you made out the application?

A I no make it out.

Q You didn't make it out.

Then after you made out the application you were given a test in English, were you not, a written test in English?

A Yes.

Q And you answered the questions?

A Yes.

Q On the basis of your answers you were issued your driver's license?

A I don't know.

Q Well, you got one, did you not?

A Yes.

Q Do you recall a New York newspaper?

A No.

Q You have never read a New York newspaper?

A No.

Q At any time in your life?

A No.

Q Have you ever picked one up to look at?

rgh 101

A I am not interested.

MR. REID: Would you mark this, please, as the next exhibit.

(Defendant's Exhibit F marked for identification.)

Q I will now show you Defendant's Exhibit F for identification and I will ask you whether or not you can read what's in big print in the middle of the page.

A Nursing probe calls Rocky.

Q Now would you read down what's on the bottom.

A MAC-Beame agreement.

Q Can you read up here at the top, what this is?

A The New York Post.

Q And what about over here on this side on the top?

A Trash pickups another conscious.

Q Change.

MR. LORY: May the record show that what reading he is doing is about third grade level the way he is pronouncing his words?

THE COURT: I would suggest that I am not about to grade his reading, but I have observed that he has some familiarity with the printed word. Let's say that.

Q I will show you on page 2, can you read this up there?

A I no can read this one.

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Q They, t-h-e-y.

A All feel like a million.

Q Can you read this here on page 3?

A City's plan -- that's wages freeze fire hike.

Q Fair hike.

A I am not familiar with that.

Q You get a withholding slip when you are paid your wages, do you not, a W-2 form for income tax?

A Yes.

Q And it has your wages on it, does it not?

A A friend of mine fills it out.

Q You look it over before you give it to your friend to fill out, do you not?

A No, I don't. I don't understand.

MR. REID: Your Honor, I don't want to delay this but I just wanted to ask him two or three more questions

THE COURT: All I am anxious to determine now is whether he should proceed to orally testify without an interpreter. I do not want you to conduct a voir dire or a pre-cross-examination on his reading ability. I have given you considerable latitude. I am prepared to rule now on the question of the voir dire.

MR. REID: All right, your Honor.

THE COURT: If you have further questions you may

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ask them because I am going to permit Mr. Lory before I rule to ask any questions he wants to ask.

MR. REID: I won't ask any further questions, except this one, your Honor.

THE COURT: Yes.

Q Yesterday or Monday in the courtroom you and I sat back over in the corner?

A Yes.

Q We spoke in the English language?

A Yes, but --

Q Please. And we spoke about Mr. Napoli's injury?

A Excuse me.

Q We spoke about Mr. Napoli's injury, his accident?

A Yes.

Q We talked for a few minutes, you and I?

A Yes.

Q And we conversed in the English language?

A Yes, but I don't understand everything.

MR. REID: I have no further questions.

THE COURT: Mr. Lory.

VOIR DIRE EXAMINATION

BY MR. LORY:

Q Mr. Mignano, did you have a newspaper with you when you came to court?

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A No, just an Italian paper.

Q That's a newspaper.

A Yes.

Q Where is that?

A Mr. Napoli has.

Q Is this the paper that you had with you this morning?

A Yes.

MR. LORY: If your Honor please, for the record, if I may, Mr. Reid, a copy of Il Progresso, the Italian-American newspaper for, if I can translate from Italian to English, Wednesday, the 30th day of July, 1975, which is written in Italian.

THE COURT: Is that today's newspaper?

THE WITNESS: Yes.

THE COURT: And you brought it with you today?

THE WITNESS: Yes.

THE COURT: That will be marked for identification. That will be 6.

(Plaintiff's Exhibit 6 marked for identification.)

Q Mr. Napoli, when you made application for your citizenship did you make out the application yourself?

A No.

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Q Did you have help doing it?

A Yes.

Q Who helped you?

A The travel agents.

Q Did you have to take a test, a written test in order to get your citizenship papers?

A I don't think so. I don't remember.

Q In order to qualify for citizenship you had to be able to read and write a language, isn't that so?

A Yes.

Q What language did you read and qualify in?

A I don't understand that question.

MR. LORY: I withdraw it.

Q Mr. Mignano, when you drive a car you come upon certain road signs, isn't that so; when you drive a car there are signs on the road?

A Yes.

Q And these signs each have an individual shape?

A Yes.

Q Like if you come to a yield sign it is triangular, if you come to a stop sign it has eight sides to it?

A I don't know. I just look at the sign. I don't know the shapes.

Q Okay.

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MR. LORY: That's all, your Honor.

THE COURT: The court will direct that the witness be questioned in English until such time as it would appear to the attorneys who may then make an application or to the court that he is unable to testify in that language. At that point we will swear the interpreter, who is available, and if necessary he will interpret, but the court's observation of the witness, listening to his answer to both of your questions, leads me to conclude that here I have a young man who has lived in this country for nine years, has worked in this country, holds a driver's license and although I would suggest his primary facility is Italian, he is sufficiently conversant with the English language to respond to questions in that language. However, if there comes a time when he appears to me or to you, either of you, to be unable to understand a question and an application is made for the interpreter to be utilized, I will consider the application at that time. Thank you.

You may step down, Mr. Mignano.

(Witness excused.)

THE COURT: Miss Crueger, bring in the jury now.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen. I want to apologize for the delay. We have been here in the

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courtroom and have been taking care of some matters in this case which required attention and I determined that rather than bring you back for a couple of minutes and then send you out and bring you back and then send you out again, it would be better if we take care of all the legal matters that were required to be taken care of outside the presence of the jury at one time. We have now done that and I intend that we proceed now with the trial before you ladies and gentlemen.

If you recall, we are still on the plaintiff's case. Mr. Lory, you may proceed.

MR. LORY: If your Honor please, may I show the jury Plaintiffs Exhibit 5, which is the cast that was earlier spoken of.

THE COURT: Yes.

MR. LORY: It is in evidence and if you want to handle it.

(Plaintiff's Exhibit 5 handed to jury.)

MR. LORY: If your Honor please, I call Salvatore Mignano.

S A L V A T O R E M I G N A N O, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LORY:

Q Mr. Mignano, what is your occupation?

A Longshoreman.

Q How long have you been a longshoreman?

A Nine years.

Q Were you born in the United States?

A No.

Q Where were you born?

A Italy.

Q When did you come to the United States?

A Excuse me?

Q When did you come to the United States?

A In 1966.

Q Are you a citizen?

A Yes.

Q Since you have been in the United States have you always worked as a longshoreman?

A Yes.

Q Now, do you have a particular job as a longshoreman?

A Deck man.

Q Do you belong to a gang?

A Yes.

Q Whose gang do you belong to?

A Battista's gang.

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Q Did you belong to this gang in 1974, in January?

A Yes.

Q And were you a member of that gang on January 9, 1974?

A Yes.

Q Mr. Mignano, have you ever in your career as a deck man worked as a gangway man?

A I don't understand that question.

Q Are there times when you are a deck man that you must work as what you call a gangway man?

A Yes.

Q The signal man?

A Yes.

Q Did you ever do that?

A Yes.

Q When you do that where do you station yourself?

A Where I stay?

THE COURT: Where do you stay.

Q Yes, where do you stay.

A Off the -- I can't explain it in English.

Q Do the best that you can. Where do you stay?

MR. LORY: May I lead or suggest?

THE COURT: You may lead in this area.

xxxx

A Yes.

Q You can start working cargo.

A Yes.

Q Do you know Antonio Napoli?

A I know him from the work.

Q Does he belong to the same gang that you belong to?

A Yes.

Q What's his job in the gang?

A Deck man.

Q Who is your hatch boss?

A Battista.

Q Was that the man who was here yesterday?

A Yes.

Q Was he your hatch boss on January 9th of 1974?

A I think so.

Q Were you there when Mr. Napoli got hurt?

A Yes.

Q Was he the hatch boss on that day?

THE COURT: Battista that is.

A Oh, Battista?

Q Yes.

A Yes.

Q Do you remember what the weather was on that day?

A That day it was snow.

Q Was it snow when you went to the pier when you left the house and went to the pier was it snowing?

A Yes.

Q And did it continue to snow from the time you left the house until the time that you got to the pier?

A Yes.

Q What time did you get to the pier?

A About a quarter to 8.

Q Now, during this voyage of this ship which has been identified in this trial as the Hellenic Destiny, did you work on the ship any day before this particular day?

A Yes.

Q How many days before did you work on it?

A I don't know. About two or three days. I don't remember.

Q Do you remember the first day you went aboard the ship during this trip?

A No.

Q All right, you arrived at the pier at a quarter of 8 you said. Was that Pier 57?

A Yes, 57.

Q Now, when you arrived at the pier where did you go?

A We waited until they blew the whistle.

Q I beg your pardon?

A I waited until the boss called us.

Q Did you say something about a whistle?

THE COURT: Yes.

MR. LORY: I just wanted it on the record.

THE COURT: In this context, blowing the whistle means it is time to start working, is that right?

THE WITNESS: Yes.

Q When the whistle blew where did you go?

A We checked in and stand by.

Q Stand by, what does that mean?

A No work. You know, we stay on the docks.

Q You wait there?

A I wait there.

Q Where did you wait, on the ship or on the dock?

A On the dock.

Q Did there come a time when you were told to go aboard the ship?

A Excuse me?

Q Did there come some time when somebody told you to go aboard the ship?

A About 11 o'clock.

Q Somebody told you go aboard the ship at 11 o'clock, is that what you are saying?

A Yes.

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A We went to the number 5 hatch.

Q Did there come a time when you passed out from underneath the ceiling of the midship house?

You come aboard the gangway.

A Yes.

Q For a while there is a passageway with the roof over your head?

A Yes.

Q That's the midship house.

A Yes.

Q Now you step outside of that and you are out in the open.

A Yes.

Q Did you do that?

A Yes.

Q Did you do that on the inshore side of the vessel?

A The inshore side.

Q When you stepped out onto the open deck what was in front of you; was that hatch number 4?

A Number 4.

Q Did you look at the deck when you stepped out?

A It was steel drums.

Q Where were the steel drums?

A Between number 4 and 5.

Q Was there any distance from where the steel drums began -- in other words, as you come out from under the roof of the house --

A Yes.

Q Was the open deck between you and where the drums started?

MR. REID: We are getting into a crucial area, your Honor, and I would appreciate it if he wouldn't lead the witness now.

THE COURT: Yes, after this question I would suggest it.

MR. LORY: I agree.

Q Do you understand what I am saying?

A Yes.

Q When you stepped out was there an open area of deck from that point to where the drums started?

A Until -- yes.

Q Tell us what you saw with respect to that area.

A I don't understand the question.

Q Was anything there?

A There was drums, I don't know, from number 4 to number 5.

Q From the house to where the drums were was there anything on the deck in that place?

A Snow.

Q How was this snow? Tell me what you saw?

A What do you mean?

Q Was there snow all over the place?

A I can't remember very well because there was snow, but I don't remember if it was all over.

Q How deep was the snow there?

A About two, three inches.

Q Was it two, three inches from the rail to as far as you can go to the other side?

A I think so.

Q What did you do then?

A We go to work. We go on top of the drums.

Q How did you go on top of the drums?

A We got two or three steps.

Q When you got to the top of these two or three steps was there anything on top of these drums?

A There was plywood there.

THE COURT: Plywood?

THE WITNESS: Yes.

THE COURT: And that was laid down on top of the drums?

THE WITNESS: Yes, that was laid down on top of the drums.

Q Mr. Mignano, you told us that you went up on top of these three steps, you climbed these three steps and there was plywood there.

A Yes.

Q Now, tell us where this plywood began and where it led to.

A It began from number 4 where the drums start until they finish all the way in the back of number 5.

Q What was the weather at this particular time?

A When we go on the ship?

THE COURT: Yes, at about 11 o'clock.

Q When you came out at about 11 o'clock what was the weather?

A It stopped snowing.

Q Was there anything on this plywood?

A There was snow.

Q Was the snow even on this plywood, the two, three inches that you said before, or was it something different?

A I think it was a little less.

Q And then you went to number 5 hatch?

A Number 5 hatch.

Q When you got to number 5 hatch where did you go?

A I go to the winches.

Q Did you do anything before you went up on top

of the winch?

A No.

Q What was Mr. Napoli's job that day?

A Gangway man.

Q Where was he supposed to station himself?

A The after end of the number 5 hatch.

Q Was there open deck there that he could stand on?

MR. REID: I object.

THE COURT: Yes, sustained.

Q Was there anything present on the deck in the place where Mr. Napoli had to station himself?

MR. REID: I object to the form of the question.

THE COURT: Sustained. It is leading and I must ask you to rephrase it.

MR. LORY: All right.

Q Describe the area of the deck where Mr. Napoli had to station himself to do his job as the gangway man?

MR. REID: I object to that.

THE COURT: Sustained. Had to station himself.

Q Did you see where Mr. Napoli was standing?

A He was standing on top of the drums.

Q Was he standing on the drums themselves?

A Excuse me?

Q What was under his feet?

MR. REID: Leading,please.

THE COURT: Well, I don't consider that leading.

THE WITNESS: Can I answer?

THE COURT: Yes.

A I saw the snow, but I didn't see if there was something else.

THE COURT: Was there any plywood near where he was standing?

THE WITNESS: I no see it.

THE COURT: In other words, you are now testifying that from where you were you saw Mr. Napoli standing on the drums; that's your testimony. Now, if you want to add to that go right ahead.

A I saw Mr. Napoli on top of the drums, but I don't see if there was plywood or something else there.

MR. LORY: I couldn't hear the answer.

THE COURT: All right, let's have the reporter repea it.

(Record read.)

Q You proceeded to the winch deck between number 4 and number 5, is that corre ct?

A Excuse me, I don't understand that question.

Q Is there a place where the winches arelocated between number 4 and number 5 hatch?

A Yes.

Q And where the controls are located?

A Yes.

Q Where is that?

A The thing is forward of the ship,the hatch.

MR. LORY: If your Honor please, at this particular point I would request the use of the interpreter.

A I don't know.

THE COURT: You have the diagram of the ship if you want to use it. He can show you and you can show the jury if you wish.

MR. LORY: Let me try it this way.

Q Mr. Mignano, is there a deckhouse between number 4 and number 5 hatch?

A A deckhouse? What do you mean deckhouse?

Q I show you Defendant's Exhibit B in evidence.

MR. LORY: Ladies and gentlemen, it is a diagram of the ship.

THE COURT: Actually, ladies and gentlemen, if you ever do see this it indicates at the top that it is a diagram of a ship called the Hellenic Splendor, but it has been agree that the Hellenic Splendor is a sister ship of the Hellenic Destiny and though we have a very large plan available of the Hellenic Destiny it would appear that this smaller plan

substantially represents the Hellenic Destiny, which is, as I say, a sister ship of the vessel which is pictured here.

Now you have Defendant's Exhibit B in evidence in front of you.

MR. LORY: He is pointing to a masthouse that is between number 4 and number 5.

Q What do you call this, Mr. Mignano?

A That's a platform or something.

THE COURT: A platform. All right.

Now, am I correct, sir, that there is a platform between the number 4 and the number 5 hatch; is that correct?

THE WITNESS: Yes.

THE COURT: And in the middle of that platform is a mast, is that right?

THE WITNESS: Yes.

THE COURT: And also attached to that mast are booms.

THE WITNESS: Booms, yes.

THE COURT: Are the winches which you were to operate located on that platform?

THE WITNESS: Over there.

THE COURT: Indicating right on the platform.

So when you came out of the deckhouse and went to the number 5 hatch did you climb up on that platform?

THE WITNESS: Yes.

MR. REID: Your Honor, could we use a pen and extend a line out and mark a W so the jury can see that?

THE COURT: All right. Would you take the pen from Mr. Reid and put an M for your name, Mignano, where you stationed yourself to operate the winches. Put an M there. The witness has indicated and M.

Ladies and gentlemen, this plan will be available if you wish it, either now or when you go in to deliberate, and he has indicated by the letter M his initials where he stationed himself and it appears that he stationed himself on a small platform between the number 4 and the number 5 hatches.

Mr. Lory has now handed the exhibit to the jury and they will have the opportunity now to see it for themselves.

Q Now, is it fair to say, Mr. Mignano, that your station, to perform your job duties, was on a platform between the number 5 and the number 4 hatches?

A Yes.

Q And your place of work was at the after end, the side closest to the back of the ship on that particular platform?

A I don't understand.

Q The platform has a front side and it has a back side, does it not?

A Yes.

Q You have indicated on the diagram that you have stationed yourself on the back side of that platform.

A Yes.

THE COURT: Were you facing the number 5 hatch?

THE WITNESS: Yes.

THE COURT: And that was the hatch you were going to work?

THE WITNESS: Yes.

Q At your station where you are facing aft towards the back of the ship, in other words, to do your job you would also be looking aft, isn't that so?

A Yes.

Q And Mr. Napoli, his station where he was working. that was also aft of where you were?

A Yes.

Q From where you were operating those winches could you see down in the hatch underneath of where you were standing?

A Yes. In the square, yes.

Q In the square?

A Yes.

Q Is there a cargo stowage area in the wing towards number 4 hatch under you? Do you understand what I am talking about?

A Number 4 hatch? I don't understand.

Q Mr. Mignano, you are standing here. If I may, you have a rail in front of you.

A Yes.

Q Is there a cargo stowage space underneath your feet and behind you in the number 5 hatch in the wings?

A Yes.

Q From where you are stationed could you see that?

A Down under me, no.

Q Were you operating the winch at the time Mr. Napoli got hurt?

A Yes.

Q Had you moved any drafts of cargo before that time?

A I think two or three, something like that.

Q And from where you were on top of the winch platform could you see where Mr. Napoli was standing?

A Yes.

Q Could you see on what he was walking?

A I don't understand that part.

Q You say where Mr. Napoli was?

A Yes.

Q How high is this platform that you are talking about?

A About eight or nine feet.

Q And you are how tall?

A Five, five.

Q So would it be fair to say that you were about 14 feet above the deck?

A Maybe.

Q And these drums of deck cargo, how tall were those?

A The drums are three feet.

Q So would it be fair to say that 11 feet below where you were was this area of drums?

A Yes.

Q And from there could you see where Mr. Napoli was working?

A Yes.

Q What did Mr. Napoli have to do, where did he have to go, what did he have to do?

MR. REID: Objection.

THE COURT: Sustained.

Q What did you see him do?

A He has got to give a signal.

Q Where was he when he gave signals?

A On top of the drums.

Q What was he walking on?

A I don't know.

Q Was there anything on these drums that you could see?

A There was snow.

Q Did something happen to Mr.Napoli?

A He fell down.

Q Where was he when he fell down?

A On top of the drums.

Q Did you see him fall?

A I saw him on top of the drums because I looked down on the hatch.

THE COURT: Mr. Recorder, would you read the answer please.

(Answer read.

Q Now, when you looked down on the hatch what did you see?

A What do you mean?

Q What did you see?

A In the hatch?

Q You said you saw Mr. Napoli, right?

A Yes.

Q At the time that he got hurt.

A Yes.

Q Is that what you said?

A Yes.

Q Because you looked down at the hatch. When you looked over there what did you see?

A I have to pull the draft and send him on the deck.

THE COURT: Did you see Mr. Napoli actually fall?

THE WITNESS: I don't see because at that particular time I took a draft from the hatch and sent it to the dock and then I took the draft -- put him on the pallet and send it down.

THE COURT: Did there come a time when you saw Mr. Napoli?

THE WITNESS: When he called me.

THE COURT: He called you?

THE WITNESS: For help. I leave everything and I go down and I call the hatch boss and the other men to help me.

THE COURT:So you didn't see him fall, but you heard him call?

THE WITNESS: Yes.

THE COURT: And when you heard him call you stopped the winches?

THE WITNESS: Yes.

THE COURT: And you went down to help him, is that right?

THE WITNESS: Yes, yes.

Q When you went down from the platform you had to go down a ladder, isn't that so?

A Yes.

Q From the ladder what did you step on top of?

A Drums.

Q Where did you go from there?

A I went where Mr. Napoli was.

Q What did you walk on?

A Oh,on the -- it was plywood.

Q You walked on plywood from the ladder to where Mr. Napoli was?

A Yes.

Q When you got there, with respect to this plywood what did you see?

A I don't remember because on the particular time I can't look.

Q Did you see plywood where Mr. Napoli was walking?

A I don't remember.

Q Where was Mr. Napoli?

A On top of the drums in the after end.

Q Then what happened?

By the way, answer this question first, please, Mr. Mignano. When you discharge cargo the draft as it moved, did it move in front of Mr. Napoli or behind Mr. Napoli? That is a bad question and let me withdraw it and rephrase it.

When the cargo moves across the deck was Mr. Napoli stationed further back on the ship or more forward

on the ship from where the cargo passed the deck?

A He was in front of me.

Q He is in front of you?

A In the front of the draft.

Q So if he was looking aft, looking in the same direction you were the draft would pass in front of him?

A No, no.

THE COURT: When Mr. Napoli was stationed on the deck was he looking at you or looking away from you?

THE WITNESS: He was looking at me because he has to give me signals.

THE COURT: He looked at you?

THE WITNESS: Yes. And the draft goes between me and him.

THE COURT: Thank you.

THE WITNESS: Thank you.

MR. LORY: Thank you, Judge.

Q When you got to Mr. Napoli what did you see? Did you see anything?

A I don't --

THE COURT: When you came down to where Mr. Napoli was, was he standing or was he lying down?

THE WITNESS: He was lying down.

Q What did you do then?

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THE COURT: Just could I ask one question?

MR. LORY: Please.

THE COURT: What, if anything, was he lying on?

THE WITNESS: I don't remember because at that time we got help.

THE COURT: You don't know?

THE WITNESS: I don't remember.

Q Did you do anything for Mr. Napoli at that point?

A Yes, we called -- we bring one pallet on the deck, we put him on the pallet and we send him on the dock.

Q Were you using pallets to discharge the cargo from the number 5 hatch?

A Yes.

Q So the pallet bridle was already on the hook?

A Yes.

Q And if I may lead for the moment, with Mr. Reid's permission, a pallet bridle is an instrument with four wires hanging down and two bars that slides into the open end of the sandwich of lumber. That's the best way I can describe it. You have got four by fours or two by threes in line on top of which they put boards one after the other with a space between on both sides. The ends are open like a U and the bridle slides right in. As you take the strain it squeez in and carries. Mr. Reid?

MR. REID: No objection.

MR. LORY: Objection or no objection?

MR. REID: No objection.

MR. LORY: Thank you.

Q Was Mr. Napoli placed on this pallet?

A Excuse me?

Q Did you put Mr. Napoli on the pallet?

A No, because the other men put him on the pallet.

Q Because you had to go back to the winch?

A Yes.

Q And you put him down on the dock?

A Yes.

Q Then what did you do?

A I don't know. They brought him to the office.

Q Did you continue to work?

A For a little while, I think, yes.

Q For how long?

A About until 11:30 after it started snowing again.

Q And then what happened?

A They send me home.

Q Mr. Mignano, did somebody come around to see you some time after this accident and talk to you about this accident?

A Yes.

Q Did you tell him what you knew about the accident?

A I told him what's happened.

Q Did you have a conversation with this man when you told him what happened? Did he ask you questions and did you give answers?

A Yes.

Q Was this conducted in the English language or in some other language?

A Sometimes in English and the rest in Italian because I don't understand -- two years ago I don't understand very well. He talked to me in Italian and I answered in Italian.

THE COURT: In other words, you spoke with him and each of you spoke in English sometimes and in Italian sometimes?

THE WITNESS: Yes.

Q By the way, do you read English?

A No.

Q Do you read any newspapers?

A Just the Italian paper.

MR. REID: I didn't hear that.

THE COURT: Just the Italian paper.

Q After you spoke to him did he do something?

A He read what I say and after I sign.

Q Let's go slow. Did he do something with the information which you told him?

THE COURT: Did he write it down?

THE WITNESS: Yes, he write it down.

Q After it was written down did he show it to you?

A Then he read it to me back and after that I signed.

MR. REID: I didn't hear.

THE COURT: He read it to me back and after that I signed.

Q Do you know who that person was who came over to talk to you?

A I think it was -- I don't know the name, but him.

THE COURT: Indicating the man sitting in the front row next to Mr. Amarante?

THE WITNESS: Yes.

THE COURT: That is Mr. Robert Lynch for the record.

MR. LORY: Your Honor has a good memory.

Q Did he give you a copy of this paper after you signed it?

A No.

Q Now let me ask you this, Mr. Mignano. This plywood that was on this deck cargo of drums on this ship on this day, do you know who put the plywood there?

A I don't know because we see it there already.

MR. REID: I'm sorry, I don't understand.

THE COURT: As I understood it je saod as far as he saw he didn't know because he saw it there already.

Q Do you know who provides and supplies plywood to a ship when it is needed?

MR. REID: I object to that.

THE COURT: Sustained. If you want to ask about the Hellenic Destiny of course you may.

Q While you were abord this ship on this day before Mr. Napoli had his accident did you do anything with the plywood that was on top of these drums?

A No.

Q Did you see any other longshoremen do anything with the plywood that was on top of these drums?

A I don't think so. I don't remember.

Q Well, did you --

A I don't remember.

MR. LORY: Mr. Reid, you may inquire.

CROSS-EXAMINATION

BY MR. REID:

Q You have been in the United States for nine years

A Yes.

Q Did you work during that period of nine years as

a longshoreman?

A Yes.

Q When you arrived in this country you first lived up in the Bronx?

A Yes. For about five or six months.

Q Have you always worked over on the waterfront in Brooklyn?

A I don't understand that.

Q Have you worked on ships in Brooklyn?

A Yes.

Q Most of the time?

A Yes.

Q Did you apply for United States citizenship?

A Yes.

Q When you applied for United States citizenship were you given any papers in English to read over and to sign?

A In the court or where?

THE COURT: At the Immigration.

A Oh, at the Immigration. They asked me questions and you answered their questions?

THE WITNESS: Yes.

THE COURT: Was this on a piece of paper or did someone talk to you?

THE WITNESS: No, they talked to me.

Q Well, did they give you any paper in English?

A No.

Q None at all?

A None at all.

Q Did you attend any classes or school held by the Immigration Department?

A Excuse me, I don't understand.

Q While your citizenship application was pending did you go down to a school or class where the people taught you something about American citizenship?

A I don't understand that.

Q Between the time you filed your application for American citizenship until the time that you got your citizenship papers did you in between that time come up to the courthouse, either or in Brooklyn, New York, and talk with the Immigration officials about citizenship or becoming a citizen?

A Not because I fill out the application in the agenc

THE COURT: At the travel agency, he helped you?

THE WITNESS: Yes. He helped me fill it out because I can't read.

Q And that was in English?

A Yes.

THE COURT: Did you ever go to the Immigration

office at 20 West Broadway in New York here?

THE WITNESS: Yes, but not for me, for my father.

THE COURT: In any event, neither at the Immigration office or here or at any courthouse were you given anything to read?

THE WITNESS: No.

Q Now, do you hold a driver's license?

A Yes.

Q That's a New York State driver's license?

A New York State, yes.

Q Did you receive any questions in English to read and answer?

A Yes.

Q During the test that they gave they had certain signs for you to recognize in the English language, like stop, isn't that so?

A Yes, but --

MR. LORY: If your Honor please, the signs have a configuration which is also a point of recognition.

THE COURT: Yes, it is true. We haven't begun to adopt what they call the international road signs.

Q You recognize the word stop when you drive down the street, do you not?

A Yes.

Q When you come up to a stop sign you see the word yield, y-i-e-l-d, you recognize that, don't you?

A That's one way.

Q No, yield.

A I don't know.

MR. LORY: Mr. Reid, the sign is triangular.

Q You can read the sign which says one way?

A Yes. They teach me that in the school,what do they call it, auto school, school driving.

THE COURT: Driving school?

THE WITNESS: Yes.

THE COURT: You went to the driving school?

THE WITNESS: Yes, I went to the driving school.

THE COURT: And after you finished you took a test?

THE WITNESS: Yes.

THE COURT: And they gave you a license?

THE WITNESS: Yes.

MR. REID: Okay, very good.

Q You know some words in the English language; you can read some words, can you not?

A I can say 5, 10 percent.

Q I show you a paper which has been marked as Defendant's Exhibit F for identification and I will ask you

whether or not you can read the words in the middle of the page.

A Nursing probe calls Rocky.

Q Read up here at the top.

A Where?

Q At the top left-hand corner.

A Trash pickups are not conscious.

Q Change?

A Change.

MR. LORY: Mr. Reid, I would suggest if you have to help himthat he cannot read.

Q What's these words up here?

A New York Post.

Q What's the word down at the bottom of the page?

A MAC-Beame agreement.

Q What's this here?

A City plan wage freeze fair hike.

Q Very good. We won't pursue that any further.

MR. REID: Could you please mark this for identification.

(Defendant's Exhibit G marked for identification.)

THE COURT: It is a blank piece of yellow paper, is that correct?

THE CLERK: No, there is a word on it.

THE COURT: I see.

Q I have written a word on here. Could you read that word?

A I don't know.

Q Can you spell it?

A It is -- the first word I don't know.

Q Well, the first word is like the word you read before wage. That's a"w".

A That's a "w"?

Q No, I said the first letter of the word is like you read in the paper.

A That's way.

Q W, can you read that?

A With --

Q No, the next letter.

A That's the next letter; I don't know what it is in English.

Q H.

A I, C--

Q That's an L. The reason it looks like a C is my writing.

A Yes, he said C.

Q What's the other?

A H.

Q Now the whole word?

A I don't know.

Q You don't know that?

A No, I don't know.

Q I am going to write another word down here and I am going to ask you can you identify this.

A That's we.

THE COURT: W-e, we.

MR. LORY: If your Honor please, I am going to object to this test and this procedure because I believe it to be grossly unfair. I am anticipating what is going to occur with respect to the fact that there is in existence a statement. Now, Mr. Reid is taking isolated words which are in the middle of a statement and asking this witness to identify each. Now, whether he had or did not see those words at that particular time-- either the test is fair with respect to showing him the paper or I object to the entire procedure.

THE COURT: I don't know really that you should object. He has indicated now that he is unable to read the word w-h-i-c-h, which would seem to me that that would not be unfavorable to you. He was able to read the word we. w-e, and he was able to read certain words which were shown to him. I don't know what Mr. Reid has in mind because he

did testify that before he signed this particular statement to which you now both seem to be directing your attention it was read to him so that his ability to read it would be I suggest of secondary importance. If he had testified that it had not been read to him I can understand lengthy examination here, but I am going to permit him to look at this last word which has been written by Mr. Reid and I would hope we will not be at this too much longer.

Can you read the last word which was put down?

THE WITNESS: Laid.

THE COURT: Lied. The word is what letters? Just say the letters. L?

THE WITNESS: I have got to spell?

THE COURT: Yes, just tell us what letters are there which come out lied.

THE WITNESS: l-a-i-d.

THE COURT: L-a-i-d, which you read as laid.

THE WITNESS: Yes.

Q Just one more.

MR. REID: Just one more word, your Honor, and that's it.

THE COURT: All right.

Can you read that word?

THE WITNESS: Down.

THE COURT: Now would you spell it, please.

THE WITNESS: D-o-w-n.

MR. REID: May I offer this in evidence?

MR. LORY: No.

THE COURT: Received.

(Defendant's Exhibit G received in evidence.)

MR. REID: If the Court please, may I read these four words to the jury?

THE COURT: You may.

MR. REID: Which we laid down.

Q Sir, I will show you this paper,which I would like marked for us.

THE COURT: H for identification.

(Defendant's Exhibit H marked for identification.

Q Is this your signature?

A Yes.

Q That's on the second page, right?

A I think so, yes.

Q Is this your signature in the margin on the first page?

A Yes.

Q Now, this is what Mr. Lynch read to you?

A Excuse me?

Q This is what Mr. Lynch, the gentleman back there,

read to you?

A Yes.

Q Had you ever seen me before Monday morning?

A No.

Q We sat down in the courtroom back here on the first bench?

A Before Monday morning?

Q No, on Monday morning. When you came in the courtroom on Monday morning you and I sat back there?

A Yes.

Q I showed you this statement?

A Yes.

Q And I showed you a typewritten copy of this statement, didn't I?

A Yes.

Q And I told you to read this statement, didn't I?

A Yes.

Q Then I spoke to Mr. Battista, did I not?

A Yes.

MR. LORY: Objection as to what he did with Mr. Battista.

Q And then you gave this paper back to me?

A Yes.

Q Where had you been on Monday morning before you

came to the courthouse?

A Excuse me?

Q Where had you been before you came to the courthouse on Monday morning?

Were you over in Mr. Lory's office at 8 o'clock?

A Oh, yes.

Q And you talked to him about the case?

A I talked to him about the accident.

Q And you talked to Mr Battista about the accident

A Where? On the --

Q He was over there at the same time, wasn't he?

A Yes.

Q And you talked to the plaintiff about his accident?

A Excuse

Q You talked to Mr. Napoli about his accident?

A Yes.

Q But the only conversation that you and I had is what I have just mentioned here that took place over in the corner?

A Yes.

MR. REID: If the Court please I would like to introduce this statement in evidence.

THE COURT: Mr. Lory?

MR. LORY: To save time, your Honor, no objection.

THE COURT: Received.

(Defendant's Exhibit H received in evidence.)

THE COURT: Yes. I would suggest since it is not long that you read the entire statement rather than just a portion, but if you wish to read a portion you may but then I will have Mr. Lory, if he wishes, read the rest of it.

MR. REID: I will read it all.

THE COURT: I think it would be better.

MR. REID: "My name is Salvatore Mignano and I live at 1372 64th Street, Brooklyn, New York. I have worked in Battista's gang for about three years as a deck man. On or about January 9, 1974, I recall working aboard one of the Hellenic Line ships at the 57th Street pier when the gangway man, Antonio Napoli, slipped on top of metal drums which were covered with snow and he fell backwards striking his back against the drums. I recall that we started working at 8 A.M. and it was snowing. It was still snowing when Anthony Napoli slipped on the plywood which we laid down on the metal drums and injured himself. There was snow under the plywood and also on top of the plywood because it was snowing continuously while we were working and it made the area where Napoli was working very slippery. There was no oil or any other slippery substance on the plywood which w

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being used for a walkway or path for the gangway man to give the winch man signals. I was working the winches alone and when I saw Napoli slip on the plywood full of snow I immediate shut down my winches and went over to help Napoli to get onto a pallet which took him off the ship and onto the dock where he was taken to the hospital. There was a few men who helped to get Napoli onto the pallet and down onto docks, but I don't recall who the men are at the present time. I have read this two-page statement and it is true. Signed Salvatore Mignano, 11/22/74.

THE WITNESS: R. Lynch.

MR. REID: I don't think I have any further questions of this witness.

MR. LORY: I have a few.

REDIRECT EXAMINATION

BY MR. LORY:

Q Mr. Napoli, did you ever meet me before Monday morning of this week?

A No.

MR. LORY: If your Honor please, I would like that statement read to Mr. Mignano, translated to him in Italian. I have Mr. Amarante here and I would request that Mr. Amarante instruct this witness to tell us if anything in that statement is other than what he said to Mr. Lynch.

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The plywood was already down. As the lawyer stated, we did not put the plywood down, we found it that wa

The witness now states that the statement that reads it had snowed continuously is in error, that the snow had stopped at 11 o'clock and then they started to work again.

THE COURT: He has tapped your hand again.

THE INTERPRETER: Yes, your Honor.

Here the statement reads that there was no oil or any other slippery substance, but there was snow On top of it.

MR. LORY: Thank you, Mr. Amarante.

Q Mr. Mignano, I show you Defendant's Exhibit F. which is a copy of the New York Post for July 24, 1975. Mr. Reid asked you to read certain words here and I think he asked you to read certain of these words here, is that correct?

A Yes.

Q Pick out any paragraph -- do you know what a paragraph is?

A Yes, I know.

Q Pick out any paragraph. Just put your finger down and pick out any paragraph in that article and read it to the jury. Just read it out loud.

A Anyone?

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recross

Q Anyone. Just pick it out and read it out loud to the jury.

THE COURT: In English.

A A continuation.

THE WITNESS: A continuation of the city job freeze.

THE COURT: Ladies and gentlemen, that one sentence paragraph reads a continuation of the city's job freeze.

MR. LORY: Is that the whole paragraph, Judge?

THE COURT: Yes. He picked a short paragraph.

A But I don't know what it means.

MR. LORY: I have nothing further.

THE COURT: Mr. Reid?

MR. REID: I didn't hear that, your Honor.

THE COURT: Mr. Lory said he has nothing further.

RECROSS EXAMINATION

BY MR. REID:

Q By the way, you are a member of the ILA, International Longshoremen's Union?

A Yes.

Q And you have been a member for nine years?

A Yes.

Q Mr. Napoli is a member?

A I think so.

Q And Mr. Battista is a member?

A Yes.

MR. LORY: I object to whether he knows about anyone else. The witness can only testify as to his own membership.

THE COURT: It has been asked. I trust you will not pursue this line further.

Q There was a time when ILA put out newspapers or bulletins, were there not, for members of the organization?

A Yes.

Q And there was a time when the paper, these bulletins and news items were printed only in English, isn't that so?

A No. There was in Italian and Spanish, too.

Q I know they are now, but I am talking about nine years ago.

A I don't know. I don't remember.

MR. REID: No further questions.

MR. LORY: Nothing.

THE COURT: Thank you very much, Mr. Mignano.

(Witness excused.)

MR. LORY: A moment, please.

THE COURT: Yes.

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and has been given to you following my charge. The jury is directed to return at 1:30 P.M. Enjoy your lunch.

(Jury not present)

THE COURT: Mr. Reid.

MR. REID: Your Honor, the defendant respectfull, moves the court for a directed verdict.

THE COURT: If I were the trier of the fact, Mr Reid, you might find the case terminated at this point. However, I would suggest that from my review of the testimony presented by the plaintiff, there is testimony by Mr. Battista, later contradicted by Mr. Battista's statement to the effect that he saw the crew of the ship put down the plywood. Mr. Battista also testified that there had been some cleaning of the plywood. His testimony, according to my notes, was that a path had been cleared on the plywood. My recollection is that he stated that it was the crew of the ship which cleaned part of the deck and and I drew from that the inference that the path which had been cleared by the crew. I think there is enough in the record for the jury to infer, if they were to believe certain parts of Mr. Battista's testimony and discount others, that the plywood had been laid down by the crew; that the path had been cleared on the plywood by the crew, but that the plywood had remained in a dangerous condition as the snow or

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possibly the melting of the snow caused slush and caused a slippery condition either on or under the plywood which would have caused it to slip. I think there has been a bare prima facie showing by the plaintiff sufficient to require the denial of the motion to dismiss. Accordingly, the defendant's motion to dismiss is denied.

MR. REID: The defendant excepts.

THE COURT: Gentlemen, I will ask that you return at 1:30 P.M. Mr. Reid, if you would make the telephone call that you indicated you would to ascertain the amount of medical expenses which had been advanced for work claimed and furnish that information to Mr. Lory perhaps you gentlemen can enter into a stipulation on that one matter so we can have that in the record. That is the only basis on which the plaintiff's record remains open and once that has been completed the plaintiff's record will be complete. I would suggest that if you choose to proceed we probably will be in a position to at least have summations this afternoon. If you choose to remain with the record which you now have or with very little more I would suggest that we may actually have the summations and the charge this afternoon. May I inquire how long each of you would anticipate being with your summations. Mr. Reid, since you go first?

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medical services rendered to Mr. Napoli here. That matter, and I refer specifically to the reasonable value of the medical services being $1,646.61, that matter is undisputed and you shall accept the stipulation and that figure as accurate. That does not mean that the defendant concedes that it is liable in that amount or in any other amount, but the parties have agreed that in the event you reach the point where you are considering damages you should consider the reasonable value of the medical services rendered to the plaintiff to be $1,646.61.

Mr. Lory, the plaintiff had previously rested subject to those figures being obtained. Do you have anything further at this time?

MR. LORY: No, sir.

THE COURT: Mr. Reid?

MR. REID: I would like to call as a witness Mr. Robert Lynch.

THE COURT: Ladies and gentlemen, we will now go back to the defendant's case. You will recall that Dr. Balansweig testified yesterday out of turn. He was the first defense witness and now the defense, in its turn, is calling Mr. Robert Lynch. Mr. Lynch, please.

R O B E R T A. L Y N C H, called as a witness, having been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR.REID:

Q Where do you reside?

A In Brooklyn.

Q What is your occupation?

A Maritime investigator.

Q How long have you been a maritime investigator?

A Since 1960.

Q What did you do before that?

A I worked on the waterfront.

Q What kind of work did you do on the waterfront?

A Various jobs. Lashing primarily.

Q Can you tell the jury a little bit of what lashing is, where it is performed and what you do.

A Lashing is the securing of cargo after the longshoremen place the cargo either on deck or in the hatches of the ship. The lashing would secure the cargo so that in case the ship would encounter heavy weather the cargo would not go rolling all over the hatch and damaging the hatch or other cargo.

MR. LORY: If your Honor please, may I have a moment?

THE COURT: You may.

(Pause)

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MR. LORY: Your Honor, I don't believe Mr. Lynch, at least for the purpose he is now being used, is identified in the pre-trial order as a witness in this case and accordingly I will object to any testimony that he may give outside of his present identity or scope within the case.

THE COURT: That is a problem because I do not find him listed either and you know the rules.

MR. REID: His testimony is offered in the nature of our rebuttal evidence to the plaintiff's witness and he is and integral part, he has been identified by witnesses.

THE COURT: The plaintiff has chosen to object to his testifying. The jury I suppose is entitled to consider what it has observed and under the circumstances I think the plaintiff is within his discretion in choosing to object. I am looking at your pre-trial memorandum. He does not come within the ambit of item 1, officers and crew of the vessel, or item 2, stevedores and longshoremen, or item 3, a witness set forth in the plaintiff's pre-trial memorandum, or item 4, a medical expert. Now, he may come within the ambit of an expert on shipboard custom and practices if you were only going to use him based on his experience as a longshoreman, but if you are going to go into the area of what, if anything, he said to Mr. Battista and Mr. Mignano and what, if anything, they said to him, the

plaintiff has chosen to object to your presenting him and I would suggest that unless you can give me good reason I suppose I have to abide by the objection. I don't think this witness is newly known to you.

MR. REID: I will tell you the reason why, your Honor. The first time that I had any knowledge or even any indication --

THE COURT: Why don't you tell me that at the sid bar, whatever you are going to tell me.

(At the side bar.)

MR. REID: As I said, the first time I had any knowledge or even any indication of knowledge that these men were going back on their statements which Mr. Lynch took was Monday morning sitting back in the corner of the courtroom. I had subpoenaed these witnesses as my witnesses and I was shocked, I was surprised and I felt very bitter and angry. I never had this happen to me in a long, long time in a courtroom, your Honor.

THE COURT: I have my own view of one or both of these witnesses, frankly, and I am seriously considering after this case is over, depending on who the jury believes and what it believes, in recommending a further inquiry by the United States Attorney into the matters which I have heard here because I think that one of your witnesses--

I speak of Mr. Battista -- if he didn't make two diametrically inconsistent statements while on the witness stand he came very close and I am not sure that you don't have a prima facie case of perjury just on the basis of his testimony. I have not seen the transcript and I would consider an application from counsel -- if he wishes to at the conclusion of this trial order the transcript and present it to the court, I would consider an application to refer some of his testimony to the United States Attorney because this is not the first time I have noted this among our friends on the docks. It strikes me that it is all right to help a friend, but once you are under oath I think that's where the friendship has to end, but without speaking further I must suggest it would have been better, Mr. Reid, if when you found this out on Monday you had apprised the court and counsel that it was your intention to call an additional witness in order to rebut this testimony. I might say you knew more yesterday after Mr. Battista testified,

MR. REID: I did mention that to Mr. Lory and he said "If I were you I wouldn't call him."

THE COURT: You see, the problem is, Mr. Lory, you are in a bit of a bind. As you can appreciate, by you being the one who has risen and objected to keep him out

you would give the jury, I think, the impression, rightfully or wrongfully, that you are trying to hide something and I think that could rebound to your detriment. Accordingly, because I don't feel that this man is going to prejudice you and not calling him might more prejudice you by virtue of your objection, I think it might be well for you to withdraw your objection, but if you choose not to I will rule on the objection in the presence of the jury.

MR. LORI: Your Honor, I would like to know the intent or the scope of the testimony of this witness at this particular point. He seems to be leading to something that Mr. Reid is not entitled to prove through this witness.

THE COURT: You are asking him then for an offer of proof. That's a fair request.

MR. REID: All right, I will give you the offer of proof, that he interviewed Mr. Battista on the dock in a room and he took a statement from him. He came to my office after he had spoken to him and also to the winch man. I never laid eyes on Mr. Lynch before. I engaged a gentleman by the name of C. Louis Scotti to make the investigation. I had no conversation with Mr. Lynch, except when he presented the report to me and I read it over. I only communicated with him on Monday at noontime when these men back here told me

that they were not going along with that statement. Now. they read the statements and they told me they were not going to go along with them. You know, I felt shocked, putting it mildly. I got in touch with Mr. Scotti. I couldn't reach him until later on in the evening and I had Mr. Lynch call me at my home on Monday, Monday night, and I spoke to him. Now, he will testify that he saw these men; he talked to them; this is what they told him; they read the statement over and they signed it, both of them.

MR. LORY: May I ask you a question, please, Mr. Reid? What was the purpose of asking him about lashing? You lead me to something else.

MR. REID: We can strike that out.

THE COURT: You are not going to pursue that matter at all?

MR. REID: Absolutely not. He is not an expert on that.

THE COURT: Under the circumstances you will not pursue that matter further?

MR. REID: Oh, no.

THE COURT: You are going to limit your inquiry to his interviews of Mr. Batista and Mr. Mignano and that's the subject of the examination?

MR. REID: Period.

MR. LORY: So that the record is clear, when I suggested to Mr. Reid there was no purpose of calling them -- the purpose of calling him would be to get the statement in, but the statements are in, but if he wishes to proceed in that respect I withdraw my objection.

THE COURT: Thank you.

(In open court.)

THE COURT: You may proceed, Mr. Reid.

MR. REID: Thank you.

Q Mr. Lynch, do you know a gentleman by the name of C. Louis Scotti?

A Yes, I do.

Q Do you work for him on occasion?

A Yes, I do.

Q Did he tell you at my request to make an investigation of this case, to speak to two witnesses, a Mr. Battista and Mr. Mignano?

A Yes.

Q When was it that you first met me, Mr. Lynch?

A Oh, I believe some time around January.

Q And that was after you had seen these two gentlemen

A Yes.

THE COURT: When you say January --

THE WITNESS: January, '72.

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THE COURT: This year.

Q We have a statement here which is marked into evidence as Defendant's Exhibit E which I will show to you, sir. I will ask you whether or not you talked to Mr. Battista about this case.

A Yes, I did.

Q Now, after you talked to him a statement was taken?

A Yes.

Q In whose handwriting is that statement?

A This is my handwriting.

Q After you wrote the statement out what did you do? did you read it to Mr. Battista?

A I gave it to Mr. Battista to read. He read it and he signed it.

Q Does your name appear on that statement?

A Yes. On the left side of the margin.

Q Then thereafter did you speak to Mr. Mignano? I will show you a statement which is Defendant's Exhibit H in evidence. Can you identify that statement?

A This is also my handwriting.

Q Did you speak to that gentleman?

A Yes, I did.

Q Where did you speak to him?

A At his home.

Q Who was present?

A His wife and his child.

Q How long did you speak with him about this case?

A I would say approximately about three-quarters of an hour.

Q Were they social with you?

A Yes. They were very hospitable.

Q After you had spoken to him did you write that out in your handwriting?

A Excuse me?

Q You wrote that out and this is your handwriting?

A This is my handwriting, yes.

Q What did you do when you wrote it out?

A I asked Mr. Mignano if he could read English and he said he could and I handed him the statement after I finished writing it. I naturally conversed with him and he signed it.

Q Mr. Battista, when you spoke to him -- by the way. do you speak Italian?

A Yes, I do.

Q These other two gentlemen, they can speak Italina, too?

A Yes, they do.

Q You state that each one read his respective statement before he signed it?

A That's correct.

MR. REID: You may inquire.

CROSS EXAMINATION

BY MR. LORY:

Q Mr. Lynch, where did you take Mr. Battista's statement?

A At the 57th Street pier.

Q Was that in the office of Hellenic Lines?

A It was in one of the offices.

Q You called him from the job that day, is that so?

A Yes.

Q And you brought him into a Hellenic Line office and you spoke to him?

A Yes. The office where the computer is working which shows the status of the gangs that are working all over the waterfront.

Q But this is an office maintained by Hellenic Lines?

A As far as I know.

Q I think you told us that you have been doing waterfront investigative work since 1960, is that so?

A That's correct.

Q What year did you take the statement from Mr. Battista and Mr. Mignano?

A In '74, I believe, yes.

Q So at that time you had been working with respect to investigating waterfront cases for about 14 years?

A Yes.

Q And over that period of time did you learn what makes a case and what does not make a case with respect to the various parties?

MR. REID: I object to this, your Honor.

THE COURT: I will sustain it as to form.

Q Did you learn the essentials or the elements involved in a claim being made as against a ship owner?

MR. REID: The same objection, your Honor. He is not a lawyer.

THE COURT: Well, you don't have to be a lawyer to know that. He was an investigator. It seems to me he should have known after all those years what he was supposed to be investigating. Under the circumstances I will allow him to answer that question yes or no.

A Would you repeat the question?

THE COURT: Mr. Reporter, please.

(Question read.)

A Yes.

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do you not?

A I investigate as many aspects as possible.

Q Such as?

A Such as I investigated this case from an accident report.

Q What did the accident report say?

A It is right there if you want to see it.

Q Where? I'm sorry.

A It is right on the table.

MR. LORY: One moment, please, your Honor?

THE COURT: Certainly.

(Pause)

MR. LORY: May we have this marked?

(Plaintiff's Exhibit 7 marked for identification.)

Q Mr. Lynch, is this the accident report that you made reference to?

A Yes, it is.

MR. LORY: If your Honor please, I offer it in evidence. Mr. Reid?

MR. REID: I object, your Honor.

THE COURT: Let me see it.

Did you prepare this report, sir?

THE WITNESS: No, sir.

Q Who sent it to you, Mr. Lynch?

A Mr. Scotti.

Q Do you know where he got it from?

A I imagine from Mr. Reid or from someone in Hellenic Lines.

THE COURT: Mr. Reid, would you state the basis for your objection?

MR. REID: Your Honor, it has got a lot of information on there which has no bearing upon the happening of the accident.

THE COURT: In other words, you would want to strike a portion of it?

MR. REID: Yes, as I told Mr. Lory.

THE COURT: Perhaps that might be agreeable to Mr. Lory, so if you step to the side bar, gentlemen, I will have you go over it.

(At the side bar.)

MR. REID: I wouldn't have any objection, your Honor, to go through 23. This is all the information from doctors and so forth.

MR. LORY: I don't think there is anything there that is excludable.

THE COURT: What exception to the hearsay rule do you get this under? I don't buy this as a record kept in the regular course of business. It is not the

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MR. LORY: Yes,sir, I accept the Court's offer.

THE COURT: Very well. Is that agreed?

MR. REID: Very well.

THE COURT: What we will do is delete the bottom of it.

MR. LORY: Just cut it.

THE COURT: If you don't mind.

MR. REID: No, I have another one.

(In open court.)

THE COURT: Ladies and gentlemen, the exhibit which has been offered is being admitted in part. Mr Lory is submitting Plaintiff's Exhibit 7 up through line or item 23. That is received with no objection. Is that correct, Mr. Reid?

MR. REID: Yes,sir.

THE COURT: Very well.

(Plaintiff's Exhibit 7 received in evidence.)

MR. LORY: With your Honor's permission I would like to read it to the jury, at least the pertinent part.

THE COURT: You may.

MR. LORY: Ladies and gentlemen, it relates to Antonio Napoli. When we get to item 23, which is a description of the accident, it states: "While walking or metal drums on deck he slipped on a piece of plywood

under snow and fell in between drums striking his back and head and legs and right arm on drums."

(Plaintiff's Exhibit 7 handed to jury.)

Q Mr. Lynch, did you receive any other document or information regarding this accident before you went out on your investigation?

A That's it, Mr. Lory.

Q Did you check the weather reports before you saw Mr. Battista and Mr. Mignano as to what the weather reports were that day?

A No, I have not.

Q By the way, Mr. Lynch,how many of these statements had you taken in your 14-year career?

A Countless.

Q Certain things that you are aware of must go in them, identity of the parties, the party's name and other things to identify or make sure that he can't say you were not the guy who came to talk to him?

A I am not following that, Mr. Lory.

Q Is there a form to these particular statements?

A Is there a form?

Q That you follow.

A That I follow?

Q Yes.

A I converse with the witness, if he is a witness, and naturally I start off with what his name is and get down into his job and what he knows about the incident in question.

Q Do you know who hired Mr. Scotti who in turn retained you to do this investigation?

A Mr. Reid, I believe.

Q At that time that you made the investigation did you know that a lawsuit was involved?

A Yes.

Q When you prepared the statement you prepared the statement with the lawsuit in mind, did you not?

A Of course. It is obvious.

Q In essence, and by-passing Mr. Scotti and Mr. Reid, you were taking the statement for Hellenic Lines, isn't that so?

A Well, I imagine so.

Q You took this statement after 14 years in the business doing this kind of work?

A Correct.

Q I beg your pardon?

A Correct.

MR. LORY: That's all, Mr. Lynch.

MR. REID: No further questions.

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MR. REID: I renew the motion, your Honor, I made at the close of the plaintiff's case and I renew it at the close of the entire case.

THE COURT: The motion is denied.

Anything further?

MR. REID: That's it.

MR. LORY: I could move for a directed verdict for the record.

THE COURT: If you would like to you may do that.

MR. LORY: I move for a directed verdict for the record.

THE COURT: The plaintiff's motion for a directed verdict is denied.

We will take a five-minute recess so you gentlemen can organize yourselves. Miss Crueger will give you a note 10 minutes from the end and another one five minutes from the end so you can start winding down at ten minutes to the end and accelerate the pace of the winding down five minutes from the end.

We will resume at 2:30.

(Recess.)

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CHARGE OF THE COURT

(Ward, J.)

THE COURT: It is the custom in this Court that the juror seated in seat number 1 -- in this case Mrs. Margaret Balduchi -- serve as the foreperson of the jury. The function of the foreman or forelady or foreperson is to preside at the head of the table and take the vote. In the event the jury requires anything she will write out the requirements of the jurors on a piece of paper and will send them out. Those are the functions of the foreperson. In addition, when, as and if the jury has reached a verdict she will announce that verdict. Mrs. Balduchi, you will serve as the foreperson of this jury.

Madam forelady, ladies and gentlemen:

Now that the testimony is over, the summations have been presented, the time has come for you and me to do our part in the administration of justice in this case. It is my province to instruct you as to the law and you must accept my instructions.

It is your function to determine the facts and your decision on the facts is final and conclusive. In considering the evidence and determining the facts in this case you must lay aside any consideration of sympathy. It is your duty, as well as mine, to administer justice fairly and impartially. In doing so we must be guided solely by the law and the evidence,

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and neither I nor you can permit our conclusions to be affected by sympathy.

Before I turn to the case with which we are concerned there are a few general observations that I will make. First, It is your recollection of the facts that governs. Should that recollection differ from that of the lawyers or from mine, please disregard anything that we have said as far as the facts are concerned. Of course, you will consider only the facts which have been developed at this trial. You are not to be influenced by anything you may have read about the case or anything you may have heard on the radio or seen on television. It is just what you have seen and heard here that counts.

At times through this trial I have been called upon to make rulings on various matters of law. I have sustained objections and I have overruled objections. Please do not concern yourselves at all with my reasons for doing so, and if during the trial I have said anything or indicated anything in my questions to witnesses which leads you to believe that I am inclined to favor one side or the other, please disregard it. It is not my intention to favor one side or the other. Any questions of mine were purely for clarification.

You have heard the summations of counsel. If you believe that either counsel stated as a fact something as to which there is no evidence, please disregard that part of what

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he said. Statements of counsel are not evidence. Questions to witnesses are not evidence. The evidence consists of the answers of the witnesses, matters which are stipulated and the exhibits in the case.

You have heard the testimony here. It is for you to determine what testimony you believe. How do you determine that? How do you dtermine the weight you will give to it? How do you determine whether you are going to believe it or not? In this you just use your plain everyday common sense. You saw the witnesses on the stand. How did their testimony impress you? Did they appear to be testifying frankly and honestly?

In evaluating their testimony and their credibility you apply your own sense and experience just as you do in deterimiing an important matter in your own lives when you decide whether or not you have been given a true picture of a certain situation. Youmay consider a witness' demeanor, his candor, or lack of it, his ability to express himself, his possible bias, his strength of recollection, his accuracy of recollection.

You may consider whether a witness' testimony is supported or whether it is contradicted by other credible testimony or circumstances or by any other statement that he may have made. You may also consider whether a witness has a possible self interest in the outcome of the case. This does

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not mean that a witness necessarily will testify falsely because he has an interest. It is merely a fact which you may consider.

If you find that any witness has made a material misstatement with the intention of misleading you you may disregard that part of the witness' testimony or you may disregard it all if you don't believe it or you may accept the part which you believe and find to be reliable and disregard the rest. All these things you consider in judging credibility and in determining where the truth lies.

You will recall that in addition to certain fact witnesses you heard from Dr. Campbell and Dr. Balensweig. They gave testimony concerning their qualifications as experts in the field of medicine. When a case involves a matter of science or art requiring special knowledge or skill not ordinarily possessed by the average person an expert is permitted to state his opinion for the information of the Court and the jury.

The opinions stated by each expert who testified before you were based on particular facts as the expert himself observed them and testified to them before you, or as the attorney who questioned him asked him to assume. You may reject an expert's opinion if you find the facts to be different from those which fromthe basis for the opinion. You may also reject his opinion if after careful consideration of all the evidence in the case, expert and other, you disagree with the opinion. In other words,

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you are not required to accept an expert's opinion to the exclusion of the facts and circumstances disclosed by other testimony. Such an opinion is subject to the same rules concerning reliability as the testimony of any other witness. It is given to assist you in reaching a proper conclusion. It is entitled to such weight as you find the expert's qualifications in his field warrant and must be considered by you, but he is not controlling upon your judgment.

You will recall that certain of the evidence is embodied in stipulations which both sides agreed to. Such matters are undisputed and you shall accept the stipulations as accurate for the purpose of your deliberations. For example, the parties stipulated that the plaintiff's reasonable medical expenses were $1,646.61. You shall accept that fact, but it should not influence you in one way or the other when it comes to determining who should bear that expense in the final analysis.

Evidence has been presented and it is normally presented in two forms. It may be either direct or circumstantial. Direct evidence of an event is the testimony of an eye-witness who says that he saw it happen. Circumstantial evidence is evidence as to the existance of certain facts from which one may infer that the event happened. You may consider both types of evidence in your consideration of this case.

The burden is on the plaintiff to prove every essential

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element of his case by a fair preponderance of the credible evidence. I will tell you in a moment what these essential elements are. Fair preponderance of the credible evidence means that you should take all the evidence and weigh it in your mind. Weigh first in your mind that which supports the plaintiff's contention and then weigh that which supports the defendant's, and you should, after you have weighed the evidence, determine which has the more convincing force, which is more probably the correct version of the facts, which version makes more sense to you.

It is the quality of the evidence that counts. It is not the number of witnesses or the number of exhibits. It is that evidence which seems to you most likely to represent the true picture.

If the plaintiff's evidence outweighs the defendant's evidence you should find for the plaintiff. However, should the conflicting evidence be evenly divided or balanced in your minds so you can not tell which side preponderates, then you must find against the party who carries the burden of proof; that is against the plaintiff and in favor of the defendant. Needless to say, if the evidence presented by the defendant out weighs the evidence presented by the plaintiff you should also find for the defendant and against the plaintiff.

On burden of proof, keep in mind that it is the

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plaintiff who must sustain the burden of proof on the matter of negligence.

There has been a claim of contributory negligence here on the part of the plaintiff. On that claim it is up to the defendant to prove contributory negligence by a preponderance of the evidence and if the defendant does not you should reject the claim of contributory negligence on the part of the plaintiff I will come back to these matters somewhat later.

So much for general observations. Turning now to this case.

The plaintiff, Anthony Napoli, was a longshoreman. In this suit he asserts a claim for damages which he alleges were caused by the defendant Hellenic Lines, Ltd. The defendant, who I will sometimes call the ship owner, denies that it was negligent or that it violated any duty it owed to plaintiff. In addition it claims that the plaintiff caused or contributed to his own injury.

Let us consider the plaintiff's claim. In order to recover the plaintiff must prove that the defendant was negligent and the question you must first consider, therefore, is what is negligence. Negligence is the doing of some act that a reasonably prudent person would not do or the failure to do something that a reasonably prudent person would do under the same or similar circumstances. It is, in other words, the

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failure to use ordinary care under the circumstances. The mere occurrence of an accident, of course, does not raise any presumption of negligence.

The plaintiff claims that he was injured because the defendant failed to provide him with a safe place to work. To sustain his claim he urges that permitting snow to accumulate under the plywood which was laid down on top of the drums stored on the deck and not preventing the plywood from slipping made the passage unsafe for men to walk on and that the ship's officers -- because the ship operates, obviously, through people -- knew or should have known in the exercise of reasonable care that the passage was unsafe and that they should have acted to prevent the plywood from slipping, and that they should have provided a safe passage over the deckload of drums, and their failure to do so was negligence, a violation of the ship owner's duty to supply Mr. Napoli with a reasonably safe place in which to work.

This,as I say, is the plaintiff's claim as I understand it. If his claim went beyond that I refer you back to his counsel's summation. You may certainly consider all of the evidence, and should and all of the claims which were made by the plaintiff in this case.

It was the continuing duty of the defendant ship owner at the time and place of the accident in question to use ordinary

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care under the circumstances to furnish the plaintiff with a reasonably safe place in which to work aboard the ship and to maintain and keep the place of work in a reasonably safe condition. This continuing duty to use ordinary care under the circumstances owed by the ship owner to the longshoremen while aboard the ship exists independently of and separate from any duty owed to the longshoremen by others, including the stevedoring company which employs the longshoremen.

You understand, of course, that Mr. Napoli worked for a stevedoring company. The stevedoring company was hired to come aboard the ship to unload cargo. The ship was owned and operated by the ship owner. So Mr. Napoli was the employee of the stevedoring company which had the contract to come to unload the ship,and you recall that at the time the accident occurred the number 5 hatch was being unloaded and Mr. Napoli was serving as gangwayman.

If the ship or the ship's equipment is in a dangerous condition and the dangerous condition is not readily apparent to a person exercising ordinary care and caution under the circumstances, and if the ship owner has actual knowledge of the dangerous condition, or if the dangerous condition is such as would have been known to the ship owner in the exercise of ordinary care under the circumstances, then the law imposes upon the ship owner the duty to give the longshoremen reasonable

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warning of such danger, but the ship owner is not charged with knowledge of defects which reasonable inspection would not disclose and the ship owner is entitled to assume that the longshoremen will see and observe that which would be obvious through the use of an ordinary person's senses such as was reasonably to be expected under the circumstances.

There is no duty on the part of the ship owner to give the longshoremen notice of an obvious danger, or of a danger which would have been apparent to a reasonably prudent person exercising ordinary care under the circumstances shown by the evidence in the case.

However, in the absence of appearances that caution him or would caution a reasonably prudent person exercising ordinary care under like circumstances, the plaintiff had the right to assume and to act upon the assumption that his place of work aboard the ship and whatever equipment you find was furnished by the ship owner in order for him to carry on his work as a longshoreman were reasonably safe under then existing circumstances.

This does not mean, of course, that the ship owner was a guarantor or insurer of the safety of the plaintiff. The extent of the ship owner's duty under the plaintiff's claim of negligence was nothing more than to exercise ordinary care under then existing circumstances.

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The ship owner denies that it was negligent in any respect and argues that the plaintiff was solely at fault, arguing that he should have worked from a nearby platform; that it was he and his coleagues who laid down the plywood and also that he should, before working on the plywood, have examined it and that at the very least brushed it off or shaken it off so that it would be safe to stand on.

If you agree with the ship owner's contentions your verdict on this claim should be for the ship owner. If, however, you find that the ship's crew had put down this plywood on the steel drums and had not taken care to secure it properly and that the defect was a hidden one not reasonably observable by the plaintiff, then under the circumstances your verdict on this claim should be for the plaintiff.

In addition, the plaintiff relies on certain regulations promulgated by the Secretary of Labor dealing with working conditions, safety devices, safeguards and equipment which the Secretary has deemed to be reasonably necessary to protect the life, health and safety of people working as longshoremen. Among these regulations are the following regulations which were in force and effect on the day of the accident and as to which the Court will take judicial notice.

The first of these regulations which the Court has been requested and does in fact take judicial notice of is

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found in Section 1504.2(b). Section 1504.2 is headed "Scope and Responsibility." (b) reads as follows:

"It is not the intent of the regulations of this part to place additional responsibilities or duties on owners, operators, agents or masters of vessels unless such persons are acting as employers, nor is it the intent of these regulations to releave such owners, operators, agents or masters of vessels from responsibilities now placed upon them by law, regulation or custom."

The next regulation of which the Court has been asked to take judicial notice is 1504.3(c). Section 1504.3 is entitled "Definations" and (c) reads as follows:

"The term employer means an employer, any of whose employees are employed in whole or in part in longshoring operations or related employments as defined herein within the federal maritime jurisdiction on the navigable waters of the United States."

The Court has then been asked to take judicial notice of Section 1504.33(b). 1504.33 is headed "Deckloads" and I charge you that the drums which were stored on the deck were a deckload.

"(b) Signalmen shall not be permitted to walk over deckloads from rail to coaming unless there is a safe passage. If it is necessary to stand at the outboard or inboard edge of

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the deckload where less than 24 inches of bulwark, rail or coaming or other protection exists, any signalman shall be provided with a suitable means of protection against falling from the deckload."

The final section as to which the Court has been requested to take judicial notice, and which the Court does in fact notice, is Section 1504.91(c). This section, Section 1504.91 is headed "Housekeeping." (c) Reads as follows:

"Slippery conditions shall be eliminated as they occur."

I charge you that it is the stevedore, not the defendant shipowner, which has the primary responsibility under the federal safety and health regulations to see to it that the working areas shall be kept reasonably clear and that slippery conditions are to be eliminated as they occur.

Now, if you find that the condition complained of by the plaintiff, that is permitting snow to accumulate under the plywood which caused the plywood to slip out from under him was known to the stevedore or to any of its employees, including the plaintiff, or if this condition was so open and obvious that it should have been observed, then the ship owner owes no responsibility to warn a longshoreman of the open condition. If you find such then you can not find that the defendant was negligent and you must return a verdict for the defendant. On

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the other hand, if you do not so find then you should consider the question of whether the defendant was negligent and if you find the defendant negligent you must return a verdict for the plaintiff.

As I noted earlier, the ship owner also seeks to defeat the negligence claim of the plaintiff upon its contention that the proximate cause of the accident was due solely to Mr. Napoli's own conduct, which if you so find would defeat a recovery, or if he was contributorily negligent would reduce his damages. That is a doctrine I am going to come back to.

We have here a doctrine of comparative negligence. You may have heard that when a person is contributorily negligent he is totally barred from recovery. In admiralty and maritime cases such as this one we utilize the doctrine of comparative negligence which serves to reduce the plaintiff's verdict unless you find that the plaintiff was 100 percent contributorily negligent. In that case it would reduce his verdict to zero, but I will get back to that a little later on and explain it to you.

It is not a valid defense to a suit, like this one, to contend thatthe injured longshoreman assumed the risk of his employment if the injury resulted in whole or in part from the negligence of the owner of the vessel or any of its officers, agents or employees. Although a longshoreman never assumes the

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the risk of injury from any negligence of another it is a fact of common knowlege that in almost every occupation aboard ship there is some inherent and unavoidable risk which does not arise out of negligence. A longshoreman, when he enters upon his calling, must assume all inherent and unavoidable risks of his occupation as all persons must and no person may recover for injuries resulting solely from such inherent and unavoidable risks. Therefore, the ship owner is not liable merely because a longshoreman has been injured. You do not have what is now called no-fault.

The ship owner is liable only if he has been negligent. If a longshoreman is injured as a result of the normal hazzards or risks of the business in which he is engaged without fault on the part of anyone else he is not entitled to recover damages from the ship owner.

We turn now to the matter which is referred to in the law a causation. Not every consequence that follows an accident necessarily results from it. Suppose I run a red light or a stop sign in my automobile and just as I do so an on-coming vehicle crosses the center line of the street and hits me head-on. Running the red light was not the proximate cause of this accident. The accident was not caused by my running the light.

I mentioned the word proximate cause before. It is necessary for the plaintiff to show proximate cause. In order

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to show proximate cause it is necessary for the plaintiff to show not only that the defendant's negligence played a substantial part in bringing about or actually causing the injury to him, but also that the injury was either a direct result or a reasonably probable consequence of the negligence.

I said I would come back to the matter that I referred to as comparative negligence. I will do so now. The defendant here contends that the plaintiff was himself negligent and that the negligence caused his injury. This is a defense and the burden of proving that the plaintiff was negligent or contributorily negligent is, as I indicated a few moments ago, on the defendant, but the fact that the plaintiff's acts or failure to act may have contributed to causing his accident and injury does not prevent his recovery of damages.

In suits like this one you are required to find whether the plaintiff was guilty of contributory negligence and if so what percentage his contributory negligence contributed to the accident, but this does not prevent his recovery, it only reduces the amount. If you find that the accident was due partly to the fault of the plaintiff and you find that his negligence was 10%, 20%, 50%, 75%, 90% responsible for the accident, then you will fill in this information on the special verdict form which I will give you before you retire to deliberate Obviously by using the various numbers to which I have just made

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reference I do not mean to suggest any amount. You might find 0% or 1% or 99% or 100%.

On the special verdict form I will give you there will be a blank for you to insert your findings in this regard and whatever amount, if any, you will find will not prevent the plaintiff from recovering, unless you find 100%. It will merely reduce the damages that you find by the percentage that you insert. I think you will find the special verdict form which will be handed to you to be clearly explanatory as to how you proceed.

I turn now to the law of damages. My charge to you on the law of damages must not be taken as an intimation that you should find for the plaintiff. It is for you to decide on the evidence presented and the rules of law I have given you whether plaintiff is entitled to recover from the defendant. If you decide he is not so entitled you need go no further. Only if you find that plaintiff is so entitled will you consider the measure of damages.

If you find that plaintiff is entitled to recover from the defendant you must render a verdict in a sum of money which will justly and fairly compensate the plaintiff for all loss proximately resulting from the injuries he sustained. Damages are not allowed in cases such as this as a punishment against a party and can not be imposed or increased to penalize a

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defendant. Neither can damages be based on speculation for it is only actual damages, what the law calls compensatory damages, that are recovered. On the other hand, compensatory damages are not restricted to actual loss of time or money, they cover both mental and physical aspects of injury, tangible and intangible. They are an attempt to restore the plaintiff, that is to make him whole or as he was immediately prior to his injury.

You should consider the following elements of damages to the extent you find them proved by a preponderence of the evidence: plaintiff's reasonable medical expenses, which have been stipulated to be in the amount of $1,646.61; plaintiff's physical and mental pain and suffering; his physical disability; impairment and anxiety, worry and concern, including feelings of economic insecurity caused by disability; income loss in the past. You will recall that this accident occurred approximately one year ago and the plaintiff has alleged that he lost approximately $18,821 in earnings during that time. Impairment of earning capacity or ability during plaintiff's future. In this regard the work expectancy of a man of approximately 62 would be in the neighborhood of three years,assuming that the individual were to work to age 65 and were to live to that age. Needless to say some people stop working before 65 and others unfortunately do not live to that age. Also impairment of

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normal progress in the plaintiff's earning capacity and impairment of his normal ability to enjoy the pleasures and pursuits of life during the years which remain to him.

According to the tables the plaintiff's life expectancy would be approximately 14.6 years. Again, those are normal tables. There is no guarantee that any one of us will live out our life expectancy. Some live longer and others, unfortunately, do not. No evidence of the value of such intangible things as mental or physical pain and suffering has been nor need be introduced, for in that respect it is not value you are trying do determine, but an amount that will fairly compensate the plaintiff for the damages he has suffered.

In arriving at the amount of your verdict you should also take into consideration, as I said, that all persons do not live to their age of life expectancy and that their earnings may not remain stationary, but may vary, increase, diminish or cease in the future from causes or infirmities in no way involved with the issues of this case.

There has been some testimony that the plaintiff had sustained injuries to his lower back and to his right hand and wrist prior to the time of the injury for which he is now suing. If you find from a preponderence of the evidence that before these events the plaintiff suffered no pain or disability and if you find that any bodily condition from which he suffered

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before the injury was aggravated as a result of his injury, then the plaintiff is entitled to recover for this aggravation to the same degree as if the entire disability originated completely from the events that happened on January 9, 1974. On the other hand if you find that the plaintiff has not proved by a preponderence of the evidence that the accident sued on caused an aggravation of his pre-existing condition you may not award damages for any losses that flow or arise from pre-existing disability or injury.

In conclusion, any verdict that you render here must be the unanimous verdict of the six jurors who will be entering the jury room. Our two alternate jurors who have served us loyally and well will be discharged when I send the jury in to deliberate because we work here with a jury of six.

I would like to point out to those of you who enter the jury room to deliberate on this case that you should not enter the jury room with any preconceived pride of opinion. You should not be unwilling to be convinced by an intelligent argument with your fellow jurors. Each juror, of course, has to answer to his and her own conscience. Each has to decide this case for himself and herself, but in so doing you should be willing to consider the views of your fellow jurors and talk it out and try your best to reach a unanimous agreement.

If you desire to hear any of the testimony or any

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of the Court's charge you will send out a note to that effect and you will be brought back into the courtroom and whatever you specify will be read back to you here in the court room.

If you require any of the exhibits which have been received in evidence you need only ask for them and any exhibit which has been received in evidence will be sent in to the jury room for you to examine upon your request.

Finally, this is an important case. Every case is important to the parties who are concerned with it. It is important tothe plaintiff and to the defendant and it is your obligation to decide it solely on the evidence and on the law as I have charged it to you.

As I have said before, I have prepared a form of verdict which contains six separate questions. You will take the form into the jury room and depending on how you determine the case,the answers will be made accordingly.

I shall now read the six questions to you so that you can understand how they are structured.

"1. Has the plaitiff established his claim that the defendant was negligent and that its negligence was a proximate cause of the plaintiff's accident?" Then there is a line for you to place your answer there.

"2. If the answer to Question 1 is "No", your verdict is for the defendant, and you should put an "X" here, and you

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need not answer any further questions." There is a line there, a place for an appropriate mark if you feel it to be appropriate; that is, the unanimous feeling of all six.

"3. If the answer to Question 1 is "Yes", what is the total dollar amount of damages to plaintiff?" There is a dollar sign and a line.

"4. In the event you have found above that the plaintiff is entitled to recover, do you find that the defendant has established its claim that plaintiff was himself negligent and that his negligence was a proximate cause of the accident? (Answer Yes or No.)" Then there is a line.

"5. If the answer to question 4 is "Yes", what percentage did plaintiff's fault so contribute." Then there is a line and a place for a percentage with a percent sign there as well. "If the answer to Question 4 is "No", do not answer this question. (If you entered a percentage on this question, fill in its equivalent dollar amount here.)" There is a dollar sign and a line.

"6. Subtract the dollar amount stated in Question 5 from the total amount of damages stated in Question 3 and enter here the difference, which will be the net amount of damages you find the plaintiff is entitled to recover."

"Question 3 total", dollar sign and a line and the next line:

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'"Minus Question 5 total", a dollar sign and a line and on the next line the words:

"Net recovery", a dollar sign and a line.

That is the text of the special verdict form which you will be given when you retire to deliberate on this case.

At this time I will ask counsel to the side bar and I would ask our two alternate jurors to claim their belongings from the jury room and I would ask, Miss Mills and Mr. Martinez, after you have done that if you have anything in the jury room to please return to the box and remain with the other jurors until after I have seen the lawyers. If you have nothing in the jury room then stay right where you are.

I will see counsel at the side bar.

(At the side bar.)

THE COURT: Are there any exceptions?

MR. LORY: Yes, sir.

THE COURT: Mr. Lory.

MR. LORY: Before I get to that, your Honor, I have one thing which is rather small, but I would request that you charge the word "signalman" as contained in the Regulations is synonymous with the word "gangwayman"?

THE COURT: I will do that.

MR. REID: No objection to that.

MR. LORY: Secondly, your Honor, the plaintiff takes

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exception to the Court's charge that where the condition is known to the stevedore the ship is not liable. The defendant's exception is predicated upon the finding in Landon and in that respect I hand to the Court now a supplemental request to charge which is predicated on the dictum in the Landon case. I say dictum because your Honor indicated it was in an earlier discussion.

THE COURT: Do you agree it is a dictum? It did seem that to me.

MR. LORY: Well, it may be dictum, your Honor, but by the same token I think the Circuit Court was trying to tell us something in order to eliminate certain problems and I don'tsee that a situation where the stevedore has knowledge and the ship owner also has knowledge, that this exculpates completely the ship owner.

If we look at the London case, that case holds that even where the ship owner is negligent, if there is concurrent negligence on the part of the ship owner the ship owner is responsible for damages in there entirety.

THE COURT: So you would want me to supplement my charge as follows:

"That though there may be concurrent negligence on the part of the stevedore, however great, the ship owner is liable to an injured longshoreman."

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'Mr. Reid, do you wish to comment on the request?

MR. REID: Well, as a blank statement without more, your Honor, I think this would be entirely misleading in the circumstances of this case to so charge.

THE COURT: I decline to charge as requested. You have your exception.

MR. LORY: Thank you. I have nothing else, your Honor.

THE COURT: Very well, Mr. Reid.

MR. REID: On the factual alternatives, there is another safe place where he could work, 2 in Evidence, the hatch here and the drums and the railing -- the drums came up to here and this space in here was open as shown from the testimony if you believe Mr. Battista and the plaintiff himself. He could have stood right here at the corner where it would clear the ship's rail and he could walk back and forth as well as go up on the afterhouse.

Now, you instructed them as to the afterhouse and I think there was another alternative.

THE COURT: There may have been other alternatives and I thought I referred at some point in the charge that counsel had made a number of other arguments and you should consider all of their arguments. It is always difficult in a charge to cover every possibility and I did insert, if you

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recall, some language to the effect that counsel may have made other arguments beyond what I have stated here and you should consider all of their arguments, so to the extent that you would want me at this state to refer to this particular argument I decline to do so.

MR. REID: The argument is that he was required to stand on these drums and my argument is that he had two alternate safe places to work, on the deck behind the drums and on the afterhouse. Your charge was to the afterhouse and not as to the on-deck.

THE COURT: I understand your point. I would suggest that I was not as clear as you are that the plywood actually stopped where you say it did and under the circumstances I would leave it the way I have presented it to the jury, that they should consider all of counsel's arguments. To the extent you made that argument in your summation I am certain they will consider it. Therefore, I will not supplement my charge in that regard.

MR. REID: I also renew my objection to the Court's charge that the ship was under a continuing duty to furnish a reasonably safe place to work.

THE COURT: You have your exception.

MR. REID: If the Court pleases, as we discussed in chambers, on page 11 of the Defendant's Requested Insturctions

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in Circolone, I don't believe that theCourt instructed the substance of paragraph 2.

THE COURT: You would want me to supplement my charge to add the following language:

"The vessel owner who retains no more right of control of the independent contractor's work than the necessity to secure satisfactory completion of the work owes no duty to protect the independent contractor and his employees from dangerous conditions arising during the performance of the work."

In view of the entire charge a delivered, which I consider to have been balanced, I suggest that to charge in this language at this time would cause the charge to be improper and accordingly I decline to supplement my charge to charge the language which you have just requested.

MR. REID: On the next page, your Honor, (3). I don't believe that your Honor has charged the substance as to that.

THE COURT: To the extent thatI have not I decline to charge the following language:

"The vessel owner owes no duty to warn the independent contractor or his employees of dangerous conditions created on the vessel by said employees during the performance of their work."

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As I indicated, I decline to supplement my charge to include that language.

Is there anything further?

MR. REID: I think that's it, your Honor.

THE COURT: Are there any further requests from either counsel, either exceptions or supplements?

MR. LORY: No, sir.

MR. REID: No, sir.

MR. LORY: Just thank you.

THE COURT: Thank you, gentlemen.

(In open court.)

THE COURT: Miss Kruger, would you hand the verdict form to our forelady.

Miss Kruger, have you ascertained if the marshals are prepared to take their oaths to guard the jury?

(Two marshals were sworn.)

THE COURT: Miss Kruger, while the jury is proceeding to the jury room would you have counsel collect the exhibits which are in evidence and check that they are in evidence. In the event the jury requires them they will be available.

In addition, Marshal, is there paper and pencil available?

THE MARSHAL: Yes, your Honor.

THE COURT: Very well. I now instruct the jury,

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jurors one through six, to proceed to the jury room in the company of the marshals and to commence your deliberations.

One final statement. Please deliberate around the table with all of the jurors present and if one or another has to excuse himself or herself to attend to personal business in the wash rooms I would appreciate if you suspend your consideration of the case. I would like to have it so that when you are in that jury room everybody is participating in all of the deliberations so that we can have a full interchange among you on all matters which you consider to be material.

The Court instructs the jury to proceed to the jury room to commence its deliberations.

(At 11:45 a.m. the jury adjourned to the jury room to deliberate upon their verdict.)

(Two alternate jurors were excused.)

(At 11:54 a.m. a note was received from the jury.)

THE COURT: Gentlemen, I received the first note from the jury which I direct be marked Court's Exhibit 2.

"Would like all exhibits except splint."

Gentlemen, you have handed me the following exhibits which I will send into the jury room with your consent:

Plaintiff's 1, 2, 3 and 7 in evidence and Defendant's A, B, D, E, G and H in Evidence and Court's Exhibit 1, a joint offer in evidence.

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Is it agreeable to you both that these exhibits be sent into the jury room?

MR. REID: Yes, sir.

MR. LORY: Yes, sir.

THE COURT: Miss Kruger, would you hand these to the marshal.

(recess.)

(In open court, jury not present.)

THE COURT: Gentlemen, it is now going on 2:30. I have just been informed by the marshal that the jury has reached a verdict. Miss Kruger, would you request the marshal to bring in the jury.

(At 2:30 p.m. the jury returned to the court room.)

THE COURT: Good afternoon, ladies and gentlemen. I am informed by the marshal that the jury has reached a verdict. Miss Kruger, would you take over.

THE CLERK: Members of the jury, will you please answer as your name is called.

(Jury roll called - all present.)

THE CLERK: Madam forelady, has the jury agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: Has plaintiff established his claim that the defendant was negligent and that its negligence was a

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proximate cause of plaintiff's accident; yes or no?

THE FORELADY: No.

THE COURT: That indicates that the jury has found for the defendant; is that correct, Madam forelady?

THE FORELADY: That is correct. We voted unamiously.

THE COURT: So you answered no further questions because it indicated in the form that if you answered the first question "no" there was no need to go further.

THE FORELADY: That is right.

THE COURT: Gentlemen, the jury has found that the plaintiff did not establish his claim that the defendant was negligent and that its negligence was a proximate cause of the plaintiff's accident. In other words, the jury has returned a defendant's verdict.

Do either of the attorneys wish to have the jury polled?

MR. LORY: Yes, please, your Honor.

THE COURT: Very well. Miss Kruger, would you inquire of each and every one of the jurors in turn, starting with Mrs. Balduchi, if their response to the first question is as has been indicated by Mr. Balduchi.

(Each juror, upon being asked by the clerk, "Is that your verdict?", answered in the affirmative.)

THE COURT: The Court notes there are two insertions

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on the form. After the first question the word "no" is written and after the second question an "X" is inscribed as the directions indicate and there are no further entries on the form.

Ladies and gentlemen, you have heard all of the evidence in this case and have returned a verdict for the defendant. At this time I want to continue what I think I tried to make clear. I never tell a jury whether I agree or disagree with their verdict. I try to preside impartially and hope that I have done so in this case, but I do advise juries whether I think they have performed their function as jurors in a conscienyious fashion.

I can say to you, and if the two alternate jurors who were excused before were here I would add to them, that I observed on each day of the trial this jury was ready to go. There were times when I had matters with counsel or other matters which took my time where we were not ready, but I know you were and when you came into this court room to listen you listened most attentively. I can think of at least one instance in which one of jurors corrected the attorneys, maybe a couple of you did, relative to the placing of certain X-rays, so it was obvious to me that you had been following the testimony and the presentation of the exhibits.

This is what a jury is expected to do and as to this

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I commend and thank you.

I don't know what marching orders Miss Kruger has for you but I think you will be going home.

Is that right, Miss Kruger?

THE CLERK: As soon as the cards are distributed.

THE COURT: Marshal, would you distribute the cards. Before you go, before you depart from the courthouse I want to take this opportunity to thank each and every one of you for your almost two weeks of jury service. I hope that you have found your service to be interesting. I hope that you have enjoyed your time at the courthouse and found from your point of view that the function you performed was a useful one. From my point of view the function which you performed is a most important one. It makes the wheels of justice go round and under the circumstances I do, on my own behalf and on behalf of counsel and the parties, and on behalf of the Court in which I serve, I want to thank each and every one of you for the time that you have given over these last two weeks, for the attention which you paid to the matter before you and for your participation in this important function of the governmental process because without juries the judicial system as we know it would not function half as well as it does.

So on my own behalf, on behalf of the Court in which I serve, thank you very much. The jury is excused and as I

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understand it they are to go home.

(Jury excused.)

THE COURT: Mr. Lory.

MR. LORY: If your Honor please, at this point I move the Court to set aside the jury verdict and grant the plaintiff a new trial on the following grounds; namely, that the proof supported a finding of negligence on the ship owner. It is apparent from the time used for the deliberations and also from the exhibits that were requested by the jury that they relied on statements which were not sworn to or varied from, but merely signed as opposed to direct testimony given to them under oath by the witnesses presented.

There has not been one scintilla of proof with respect to the fact that the vessel did in fact provide a safe place to work. In fact, the proof is such that despite the presence of snow aboard its vessel, despite the fact that the man had been standing by pending the stoppage of the snow, rather than being sent home the longshoremen were directed to work in an area that was know to be unsafe by the ship owner and the ship owner had a continuing obligation to provide a safe place in which to work, and this they did not.

As far as the proof in opposition to this, I remind your Honor that there was none. I remind the Court that there was testimony given at the trial, and perhaps the presence or

absence of the plywood that was over the deck stow were there or were not there and I remind the Court that there is testimony in this case that there were two men on the deck and at least eight men in the hold, each of whom would have to traverse the area from number 4 hatch to number 5 hatch in order to enter it and these witnesses were available to my adversary with respect to the proof or the failure of proof with respect to the presence or the non-presence of the certain plywoods. There is nothing in the record to indicate this, although these witnesses were available to both. At least the plaintiff did call certain witnesses and offered their particular testimony and there was nothing to rebut this.

I am pressed mostly in this particular with the effect of statements which were renounced as to their contents by the witnesses under oath and I submit to the Court that the plaintiff has been prejudiced thereby to the degree that the jury gave more weight to unsworn testimony than they did to sworn testimony.

I submit to the Court that the burden upon a witness who is in the witness box is much heavier than the burden upon a person merely conversing with someone else with respect to events thatmay have occurred at another time and while there may be motivation with respect tothe signing or non-signing of the statement,the knowledge of the interrogator as opposed

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to the interrogatee must be taken into consideration. Certainly Mr. Lynch knew what he was looking for and if he wished to stay in business he had to provide his principal with just that.

I submit to the Court that at least in my mind the jury misunderstood the testimony and misapplied the testimony which constituted the facts and the evidence in this case, and accordingly I make my motion that the verdict be set aside and a new trial be granted.

THE COURT: Mr. Reid?

MR. REID: Your Honor, I have made my summation to the jury. I have no comment.

THE COURT: The Court finds that there was a sufficient record before this jury which the Court observed to be careful and attentive in their observation of the case to support the juries' finding that the defendant, the ship owner, was not negligent.

For example, during the plaintiff's case there was proof adduced which the jury could have believed that Mr. Napoli slipped on a piece of plywood which he himself had laid down. That was presented to the jury through the statement of Mr. Battista, which was received in evidence and sent into the jury room at the request of the jury.

I think there is a substantial question as to whether

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the crew had anything to do with putting the plywood down. There is some testimony that they did, but it seems to me that it was encumbent upon the jury to accept or reject the testimony which was presented, and for example, I would note that when this particular subject came up during the examination of the plaintiff's witness, Salvatore Mignano, Mr. Mignano indicated that he didn't know who put the plywood down.

You will recall that I charged the jury that it was plaintiff who had the burden of proof, the burden of proving by the credible evidence -- the preponderance of the credible evidence that the defendant was negligent. I suggest that the jury was well within its rights in finding that the plaintiff did not meet his burden.

The Court having concluded that the jury's verdict is supported by the evidence, plaintiff's motion is in all respects denied.

MR. LORY: May I be heard further, your Honor?

THE COURT: Yes.

MR. LORY: Your Honor, I submit to you that as a matter of law it matters not who placed the plywood down, assuming the presence of the plywood which is a necessary element. The plywood itself was used to cover a dangerous condition. Assuming Mr. Napoli did which he denied, layed this plywood down, he was merely trying to make the best of a given

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condition!

The fact that it was layed over snow and ice which was on the drums was not of his making; it was a situation with respect to a risk which he did not assume and a risk which he attempted to overcome.

I submit to the Court as a matter of law the requirement or the necessity for the plywood in the first instance spells out the fact thatthe area provided was not a safe place in which to work.

THE COURT: I suggest that Mr. Napoli testified on cross-examination, among other things, that he did not get any orders from the ship's officers on the subject. He had apparently no contact with the ship's officers. He said he took his orders from his hatchboss, Mr. Battista, and he testified that he did not complain to Mr. Battista about the place he was working.

It seems to theCourt under the circumstances that the jury was entitled to believe that Mr. Napoli assisted in laying down the plywood and also was entitled to conclude that he used it knowing what it was and where it stood after a snowfall without having been instructed to use it by the ship's officers,without the ship's officers interposing themselves at all and without making any complaint through his hatchboss about the place where he was working.

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Under the circumstances it seems to me that the jury was wholly justified in concluding that the plaintiff had failed to make out a case against the defendant on the ground of negligence. As I said before I regard the juries' verdict as supported by the entire evidence and considering all of the evidence without just the few matters which I briefly averted to here I would repeat that the motion is in all respects denied.

MR. LORY: With due respect, your Honor, the matter that you have just mentioned, the fact of the absence of complaints or direct orders from the ship -- number 1, at best this would go to contributory negligence and not go to the initial finding of negligence per se.

THE COURT: If he brought it to the ship's attention and they hadn't done anything about it I think it would definitely go to the matter of their negligence.

MR. LORY: But that goes beyond the facts in the case. Also, if your Honor please, the ship did in fact, and I think we are entitled to this presumption, based upon the testimony that the men arrived at the ship or at the pier, some on the ship and some on the dock from 8:00 until 11:00. The work did not commence before 11:00. I think before work commenced -- I think plaintiff is entitled to the presumption that the order for the work to commence was given by some officer of the vessel and in this respect before that order

rg40

was given the vessel was charged with the responsibility to make known the condition of the vessel and to make the vessel safe enough to work in.

THE COURT: You would have the vessel act as the insurer. The Court's charge indicated quite clearly that that was not the extent of the vessel's responsibility in the matter.

Is there anything else?

MR. LORY: If your Honor please, I did not intend to suggest that the wessel was an insurer. I merely wanted to suggest to the Court that the vessel had a continuing obligation to provide a safe place in which to work.

THE COURT: I think the jury was well within its rights here inconcluding that the ship owner fulfilled its responsibility and under the circumstances, that the plaintiff had not proved the negligence of the ship owner by a preponderance of the evidence.

Mr. Reid, do you wish to add anything?

MR. LORY: I have one thing more to say, if I may, your Honor.

THE COURT: You may, before I hear from Mr. Reid, if there is anything he wishes to say.

MR. LORY: I think the rules require me at this time to renew my motion for a directed verdict which was previously

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denied and I ask the Court to reconsider that motion.

THE COURT: For all of the reasons heretofore given, and the reasons which were just given in connection with your first motion, the renewal of the motion for a directed verdict is in all respects denied.

MR. REID: Your Honor, I have nothing to say. The Court has stated it much better than I could state it.

THE COURT: If there is nothing further from either side the Court will direct the entry of judgment for the defendant.

There being nothing further, Court is adjourned.

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PLAINTIFF'S EXHIBIT I (1)

LOCAL CLIMATOLOGICAL DATA

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENVIRONMENTAL DATA SERVICE

NEW YORK, NEW YORK
NAT WEATHER SERVICE URBAN SITE
CENTRAL PARK OBSERVATORY
JANUARY 1974

Latitude 40° 47' N Longitude 73° 58' W Elevation (ground) 132 ft Standard time used EASTERN WBAN #94728

Date	Temperature °F: Maximum	Minimum	Average	Departure from normal	Average dew point	Degree days Base 65: Heating 7A	Cooling 7B	Weather types on dates of occurrence (1 Fog, 2 Heavy fog, 3 Thunderstorm, 4 Ice pellets, 5 Hail, 6 Glaze, 7 Duststorm, 8 Smoke, Haze, 9 Blowing snow) 8	Snow, ice pellets, or ice on ground at 07AM In. 9	Precipitation: Water equivalent In. 10	Snow, ice pellets In. 11	Avg station pressure In. - Elev. 87 feet m.s.l. 12	Wind: Resultant direction 13	Resultant speed m.p.h. 14	Average speed m.p.h. 15	Fastest mile: Speed m.p.h. 16	Direction 17	Sunshine: Hours and tenths 18	Percent of possible 19	Sky cover Tenths: Sunrise to sunset 20	Midnight to midnight 21	Date 22
1	41	31	36	3	32	29	0		0	.05	0	30.02	34	5.5	7.2	19	NW	0.4	8			1
2	32	25	29	-4	10	36	0		0	0	0	30.47	31	6.6	7.1	24	NW	8.4	90			2
3	32	30	31	-2	23	34	0	4 6	T	.35	.8	30.27	05	4.3	4.6	11	NE	0.0	0			3
4	35	28	32	-1	24	33	0	4 6	2	.16	1.1	30.09	24	4.6	5.8	14	NW	7.2	76			4
5	32	22	27	-6	17	38	0		1	0	0	30.14	27	3.6	4.3	12	SW	7.9	84			5
6	33	30	32	-1	22	33	0		1	T	T	29.89	27	5.0	5.6	9	SW	0.1	1			6
7	39	30	35	3	24	30	0		1	0	0	29.83	26	8.8	9.1	18	W	7.2	76			7
8	30	22	26	-6	7	39	0		1	0	0	30.24	30	7.0	8.6	18	NW	9.3	98			8
9	25	20	23	-9	19	42	0	4 6	3	.57	4.3	30.13	03	7.4	8.1	17	NE	0.0	0			9
10	30	23	27	-5	25	38	0	4 6	4	.31	1.6	30.10	01	3.5	3.7	9	NE	0.0	0			10
11	36	29	33	1	31	32	0	6	6	.56	0	29.79	31	3.0	3.5	22	NW	0.0	0			11
12	31	20	26	-6	14	39	0		4	T	T	30.09	31	9.5	10.1	18	NW	8.0	84			12
13	25	16	21	-11	6	44	0		4	0	0	30.46	31	7.0	7.5	12	NW	9.3	100			13
14	31	17	24	-8	12	41	0		4	0	0	30.31	24	5.7	6.5	20	SW	1.9	20			14
15	43	30	37	5	27	28	0		4	0	0	29.80	24	7.1	7.2	16	SW	1.3	14			15
16	47	40	44	12	33	21	0		2	0	0	29.68	25	3.2	3.3	14	SW	0.1	1			16
17	44	10	27	-5	14	38	0		1	0	0	30.07	01	9.3	9.9	18	NE	7.8	81			17
18	23	8e	15e	-17	0	50	0		1	T	T	30.38	36	4.4	4.8	17	N	0.1	1			18
19	44	20	32	0	27	33	0	6	1	.08	0	29.98	30	4.5	5.5	14	NW	6.4	66			19
20	31	23	27	-5	18	38	0		T	0	0	30.24	04	6.8	7.3	12	NE	0.6	6			20
21	54	31	43	11	38	22	0		T	1.05	0	29.95	05	5.7	10.8	19	NE	0.0	0			21
22	52	41	47	15	35	18	0		0	0	0	29.97	27	4.4	4.9	13	NW	9.2	94			22
23	58	41	50	18	41	15	0		0	0	0	29.91	23	4.7	6.8	17	NW	6.6	67			23
24	45	37	41	9	24	24	0		0	T	0	30.19	30	5.5	6.0	20	W	2.5	25			24
25	52	37	45	13	23	20	0		0	0	0	30.21	24	2.7	3.2	11	SW	8.7	88			25
26	39	38	44	12	29	21	0		0	.09	0	30.21	18	2.7	3.6	10	S	3.6	37			26
27	66e	45	56e	24	46	9	0		0	.14	0	29.79	25	8.0	9.2	21	SW	3.9	39			27
28	55	44	50	18	40	15	0		0	.26	0	29.83	36	2.5	3.3	17	NE	0.1	1			28
29	49	40	45	13	34	20	0		0	0	0	29.87	31	6.5	6.9	14	W	9.3	92			29
30	57	40	49	17	34	16	0		0	0	0	29.93	20	1.6	3.2	9	SW	9.9	98			30
31	60	33	48	16	36	17	0		0	0	0	29.70	26	8.0	9.8	23	NW	9.0	90			31
	Sum	Sum				Total	Total			Total	Total	For the month:						Total	%	Sum	Sum	
	1282	901				913	0	Number of days		3.80	7.8	30.05	30	5.2	6.6	23	NW	139.0	for			
	Avg	Avg	Avg	Dep.	Avg	Dep.	Dep.	Precipitation		Dep.						Date	31	Possible	month	Avg	Avg	
	41.4	29.1	35.3	3.1	25	+104	0	≥ .01 inch	11	1.09								299.0	46			
						Season to date		Snow, ice pellets														
	Number of days					Total	Total	≥ 1.0 inch	3	Greatest in 24 hours and dates						Greatest depth on ground of snow, ice pellets or ice and date					
	Maximum Temp.		Minimum Temp.			2397	0	Thunderstorms	0	Precipitation		Snow, ice pellets										
	≤ 90°	≤ 32°	≤ 32°	≤ 0°		Dep.	Dep.	Heavy fog	X	1.05	31	6.3	9			4	11+					
	0	11	20	0		-301	0	Clear	Partly cloudy	Cloudy												

HOURLY PRECIPITATION (Water equivalent in inches)

Date	A.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	P.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	Date
1	T	T	T	.02	.02	.01	T	T			T	T	T												1
2																									2
3			T	T	.01	T		T																	3
4	.05	.02	.03	.04	.01	.01							T	T	.01	.06	.06	.06	.10	.06	.08	.05	.02	.04	4
5																									5
6																T	T								6
7																									7
8																									8
9		.01	.03	.04	.08	.02	.12	.08	.11	.05	T	.02	T	.01	T										9
10	T	T	.01	.02	T	.04	.02	.02	.03	.10	.04	.03	.02	T	.01	.01	T	T	T	.01	.01	T	T	.01	10
11					.02		.02	.03	.12	.11	.14	.9	.01	.01		.01	.01								11
12															T										12
13																									13
14																									14
15																									15
16																									16
17																									17
18																									18
19	T	T	.01	T	T	.04	T	.01	.02	T			T							T	T				19
20																									20
21																									21
22						T	.01	.09	.01	.01	T	.18	.13	.30	.26	.06	.03	T								22
23																									23
24															T										24
25																									25
26																									26
27	.01	.01	.05	.01	T	.08	T										T	T	T	T	.02	.01	.02		27
28																									28
29																.02	.01	.02	.14	.06	T	.01	T		29
30																									30
31																									31

* Extreme temperatures for the month. May be the last of more than one occurrence
– Below zero temperature or negative departure from normal
$ -70° at Alaskan stations.
+ Also on an earlier date, or dates.
X Heavy fog restricts visibility to ¼ mile or less.
T In the Hourly Precipitation table and in columns 9, 10, and 11 indicates an amount too small to measure

The season for degree days begins with July for heating and with January for cooling.
Data in columns 6, 12, 13, 14, and 15 are based on 8 observations per day at 3-hour intervals.
Wind directions are those from which the wind blows. Resultant wind is the vector sum of wind directions and speeds divided by the number of observations. Figures for directions are tens of degrees from true North, i.e. 09 = East, 18 = South, 27 = West, 36 = North and 00 = Calm. When directions are in tens of degrees in Col. 17, entries in Col. 16 are fastest observed 1-minute speeds. If the / appears in Col. 17, speeds are gusts.
Any errors detected will be corrected and changes in summary data will be annotated in the annual summary.

Subscription Price: Local Climatological Data $ 2.00 per year including annual issue if published, foreign mailing 75c extra. Single copy: 20c for monthly issue; 15c for annual summary. Make checks payable to Department of Commerce, NOAA. Send payments and orders to National Climatic Center, Federal building, Asheville, North Carolina 28801.

I certify that this is an official publication of the National Oceanic and Atmospheric Administration, and is compiled from records on file at the National Climatic Center, Asheville, North Carolina 28801.

William H. Haggard
Director, National Climatic Center

SUMMARY BY HOURS

Hour Local time	Sky cover Tenth.	Station pressure in.	Averages: Temperature: Air °F	Wet bulb °F	Dew Pt. °F	Relative humidity pct	Wind speed m.p.h.	Resultant wind: Direction	Speed m.p.h.
01		30.05	33	30	24	70	6.2	31	3.6
04		30.05	32	30	24	72	5.9	32	2.9
07		30.07	32	30	24	73	5.9	31	2.9
10		30.09	34	31	25	71	6.0	31	2.9
13		30.03	38	34	25	60	7.4	28	4.1
16		30.01	39	34	25	60	7.0	29	3.4
19		30.04	37	32	24	60	6.4	29	3.6
22		30.05	35	31	24	66	6.4	31	3.6

USCOMM — NOAA — ASHEVILLE 1800

NOTICE: CLIMATOLOGICAL NORMALS BASED ON THE PERIOD 1941-1970 ARE EFFECTIVE AS FOLLOWS

Plaintiff's Exhibit I (2)

OBSERVATIONS AT 3-HOUR INTERVALS

HOUR	SKY COVER Tenths	CEILING Hundreds of ft	VISIBILITY Whole Miles	VISIBILITY Hdrds of Mile	WEATHER	TEMPERATURE AIR °F	TEMPERATURE WET BULB °F	TEMPERATURE DEW PT. °F	REL HUM %	WIND DIR	WIND VELO Knots
DAY 01											
01					R	34	34	33	96	05	10
04					L	35	35	34	96	36	6
07					L	35	35	35	100	00	0
10						36	36	35	96	00	0
13					T	39	38	37	93	27	5
16						40	37	34	79	32	14
19						36	35	34	94	32	11
22						34	33	32	94	32	8
DAY 02											
01						30	24	11	45	32	14
04						27	23	11	51	32	12
07						26	22	09	48	32	9
10						27	22	08	46	32	7
13						31	24	08	38	27	6
16						31	24	08	38	27	5
19						31	25	10	41	00	0
22						31	25	11	43	00	0
DAY 03											
01						31	26	13	47	09	0
04						31	26	13	51	09	0
07						31	27	20	64	36	3
10						31	28	23	72	05	4
13					ZR	32	29	24	72	09	5
16					ZRIP	31	30	28	89	05	7
19					ZRIP	32	31	30	92	05	5
22					ZRIP	31	30	29	92	05	8
DAY 04											
01					S	30	29	28	92	36	5
04					S	29	29	27	92	36	5
07						28	28	26	92	36	5
10						28	27	26	85	36	5
13						34	31	29	70	36	5
16						34	30	23	64	27	3
19						31	27	20	64	32	7
22						29	26	18	68	27	6
DAY 05											
01						28	25	17	63	27	4
04						24	21	14	66	32	3
07						22	20	13	68	32	4
10						24	21	14	66	32	3
13						31	26	15	51	27	3
16						32	25	14	47	24	3
19						30	27	21	69	24	6
22						30	28	24	78	24	6
DAY 06											
01						30	27	21	69	24	5
04						31	27	19	61	27	5
07						31	29	24	75	27	6
10						31	29	25	78	27	5
13						33	29	21	61	32	3
16					S	33	29	20	59	32	4
19						33	29	22	64	24	6
22						32	30	23	67	24	5
DAY 07											
01						32	30	27	82	24	5
04						32	31	28	88	24	4
07						31	30	28	88	24	6
10						33	30	25	72	24	7
13						37	31	21	52	27	11
16						37	32	24	59	27	10
19						34	30	23	64	27	8
22						32	27	19	49	27	12
DAY 08											
01						30	25	12	47	27	10
04						27	23	11	51	32	8
07						24	20	07	48	32	8
10						23	19	08	52	32	9
13						27	22	07	43	27	10
16						28	22	02	32	32	7
19						28	22	04	42	27	3
22						24	19	03	40	05	5
DAY 09											
01						23	20	10	57	05	8
04					S	21	20	18	88	05	10
07					S	22	22	20	92	05	10
10					ZRIP	22	22	21	96	05	9
13					ZL	23	23	23	92	36	8
16						22	22	21	96	36	6
19						22	21	19	88	36	3
22						22	21	19	88	36	2
DAY 10											
01						24	23	20	85	00	0
04						25	24	20	81	00	0
07					S	25	24	22	88	05	6
10					SIP	28	26	24	92	36	2
13					ZR	28	28	26	92	36	2
16					ZL	30	29	28	92	36	3
19					ZL	30	29	28	92	36	3
22					ZR	30	29	28	92	36	5
DAY 11											
01					ZR	30	30	29	96	36	4
04					ZR	31	31	31	100	00	0
07					ZR	32	32	31	96	30	4
10					R	33	33	32	96	00	0
13					R	33	33	32	96	00	0
16						35	34	33	92	27	0
19						36	35	34	92	27	4
22						33	30	24	70	32	10
DAY 12											
01						27	24	17	66	32	9
04						22	20	14	71	32	11
07						21	19	13	71	27	8
10						23	21	13	65	32	9
13						30	26	16	56	27	8
16						30	25	15	54	32	9
19						27	22	14	58	32	9
22						22	19	07	52	32	10
DAY 13											
01						19	16	07	50	32	9
04						17	15	06	62	27	9
07						16	14	06	64	27	7
10						17	15	06	59	32	8
13						22	18	06	46	32	8
16						24	19	08	40	32	6
19						20	17	06	54	32	6
22						18	16	07	62	32	5
DAY 14											
01						17	15	06	62	27	6
04						17	15	06	62	00	0
07						18	16	08	69	00	0
10						25	22	12	50	14	4
13						29	23	07	39	24	7
16						29	26	17	61	24	7
19						31	27	20	64	24	9
22						31	27	19	61	24	12
DAY 15											
01						31	27	20	64	24	10
04						30	27	20	68	24	10
07						30	27	22	72	24	7
10						33	32	27	73	24	5
13						39	35	30	70	24	4
16						41	37	31	68	24	7
19						40	36	31	70	27	4
22						40	37	32	73	24	3
DAY 16											
01						42	38	33	71	27	3
04						40	37	32	73	00	0
07						40	37	32	73	24	3
10						41	37	31	68	24	5
13						42	38	33	71	24	9
16						43	41	35	68	00	0
19						46	41	35	66	27	0
22						47	42	35	63	00	0
DAY 17											
01						43	39	33	68	32	3
04						37	34	30	76	36	4
07						30	27	21	69	36	10
10						25	22	14	63	36	10
13						28	24	12	51	36	9
16						25	21	07	46	05	11
19						17	14	-01	43	36	12
22						12	10	-01	56	36	10
DAY 18											
01						06	05	-12	39	36	10
04						06	04	-16	35	36	10
07						06	04	-09	50	32	3
10						11	08	-08	42	36	3
13					S	15	12	00	51	36	3
16						19	18	12	76	05	4
19						21	20	15	78	00	0
22						23	22	18	81	00	0
DAY 19											
01					ZR	22	22	20	92	00	0
04					ZR	28	28	26	92	24	4
07					R	32	32	31	96	24	5
10						36	35	34	92	27	3
13						43	38	37	68	32	8
16						42	36	27	52	32	8
19						36	31	23	59	32	5
22						32	28	21	64	32	4
DAY 20											
01						30	27	22	72	36	9
04						27	24	18	63	36	5
07						24	21	12	60	05	8
10						25	22	14	63	05	6
13						29	25	15	56	05	4
16						30	27	20	66	05	4
19						30	27	21	69	05	7
22						31	28	21	66	05	8
DAY 21											
01						32	30	27	82	05	9
04						32	31	29	89	05	13
07					R	34	34	33	96	05	12
10						36	36	37	96	05	12
13					R	41	41	40	96	05	11
16					R	34	33	33	96	24	8
19						47	46	46	96	24	5
22						43	43	42	96	24	5
DAY 22											
01						41	40	38	89	24	8
04						42	39	35	76	24	3
07						43	41	39	84	27	3
10						45	41	39	84	27	4
13						52	44	38	63	27	7
16						49	42	33	54	32	5
19						44	39	33	69	27	5
22						42	38	33	71	00	0
DAY 23											
01						42	39	34	73	00	0
04						41	38	34	76	14	0
07						43	41	38	83	14	4
10						48	45	42	80	24	8
13						56	50	45	67	24	10
16						57	51	46	67	24	9
19						54	49	45	72	27	6
22						51	47	42	71	27	7
DAY 24											
01						44	39	31	60	32	8
04						40	34	28	71	32	6
07						37	32	28	77	32	3
10						39	33	27	68	32	4
13						41	34	27	67	27	4
16						40	33	27	69	27	6
19						39	33	28	73	27	4
22						39	34	27	69	27	5
DAY 25											
01						38	34	27	68	27	5
04						37	33	27	67	27	5
07						37	33	27	67	00	0
10						40	34	25	55	00	0
13						49	38	31	55	00	0
16						50	39	31	52	18	5
19						46	38	31	57	24	7
22						44	35	28	59	24	4
DAY 26											
01						42	36	31	63	24	5
04						40	34	29	66	18	5
07						40	34	26	59	00	0
10						41	37	28	60	00	0
13						50	40	29	50	18	6
16						46	39	28	50	18	5
19					R	44	42	40	86	14	5
22					R	45	44	43	93	09	3
DAY 27											
01						47	47	47	100	29	5
04					F	50	49	49	96	18	4
07						56	55	54	93	24	10
10						58	56	54	87	24	10
13						66	55	46	49	24	14
16						65	52	41	42	24	8
19						61	49	36	39	27	6
22						58	48	37	44	32	7
DAY 28											
01						54	47	39	57	32	9
04						52	48	38	59	27	3
07						50	46	38	64	27	3
10						51	45	38	61	24	3
13						53	46	38	61	00	0
16					R	52	46	40	64	05	6
19					R	53	44	42	73	05	7
22					R	48	44	44	96	05	4
DAY 29											
01						46	45	45	96	00	0
04						48	47	46	92	36	9
07						44	43	42	92	36	9
10						45	44	43	92	36	10
13						43	39	32	60	32	10
16						48	41	31	52	32	8
19						49	41	29	46	32	9
22						43	37	29	58	32	6
DAY 30											
01						40	38	28	62	00	0
04						40	36	30	68	09	3
07						42	38	32	68	09	3
10						44	41	33	66	00	0
13						44	40	32	63	27	6
16						46	44	35	63	24	6
19						48	44	40	76	18	4
22						49	43	35	59	00	0

NOTES

CEILING COLUMN—

UNL indicates an unlimited ceiling.

WEATHER COLUMN—

*	Tornado
T	Thunderstorm
Q	Squall
R	Rain
RW	Rain showers
ZR	Freezing rain
L	Drizzle
ZL	Freezing drizzle
S	Snow
SP	Snow pellets
IC	Ice crystals
SW	Snow showers
SG	Snow grains
IP	Ice pellets
A	Hail
F	Fog
IF	Ice fog
GF	Ground fog
BD	Blowing dust
BN	Blowing sand
BS	Blowing snow
BY	Blowing spray
K	Smoke
H	Haze
D	Dust

WIND COLUMNS—

Directions are those from which the wind blows, indicated in tens of degrees from true North; i. e., 09 for East, 18 for South, 27 for West. Entry of 00 in the direction column indicates calm.

Speed is expressed in knots; multiply by 1.15 to convert to miles per hour.

DATA AS TO CEILING, VISIBILITY, AND OBSTRUCTION TO VISION (FOG, DUST, BLOWING SNOW, SMOKE, ETC.) ARE NOT INCLUDED FOR THIS STATION.

ADDITIONAL DATA Other observational data contained in records on file can be furnished at cost via microfilm, microfiche, or paper copies of the original records. Inquiries as to availability and costs should be addressed to: Director, National Climatic Center, Federal Building, Asheville, North Carolina 28801.

STATION: NEW YORK /CENTRAL PARK/ YEAR & MONTH: 74 01

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PLAINTIFF'S EXHIBIT I (3)

LOCAL CLIMATOLOGICAL DATA

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENVIRONMENTAL DATA SERVICE

NEW YORK, NEW YORK
NATIONAL WEATHER SERVICE OFC
LA GUARDIA AIRPORT
JANUARY 1974

Latitude 40° 46' N Longitude 73° 54' W Elevation (ground) 11 ft Standard time used EASTERN WBAN #14732

Date	Temperature °F: Maximum	Minimum	Average	Departure from normal	Average dew point	Degree days Base 65°: Heating	Cooling	Weather types on dates of occurrence (1 Fog, 2 Heavy fog ≤, 3 Thunderstorm, 4 Ice pellets, 5 Hail, 6 Glaze, 7 Duststorm, 8 Smoke, Haze, 9 Blowing snow)	Snow, ice pellets or ice on ground at 07AM In.	Precipitation: Water equivalent In.	Snow, ice pellets In.	Avg station pressure In. Elev 31 feet m.s.l.	Wind: Resultant direction	Resultant speed m.p.h.	Average speed m.p.h.	Fastest mile: Speed m.p.h.	Fastest mile: Direction	Sunshine: Hours and tenths	Sunshine: Percent of possible	Sky cover Tenths: Sunrise to sunset	Sky cover Tenths: Midnight to midnight	Date
1	2	3	4	5	6	7A	7B	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1	43	32	38	5	32	27	0	1 8	0	.03	0	30.10	33	7.1	11.2	24	NW			10	10	1
2	32	27	30	-3	11	35	0		0	0	0	30.36	32	11.0	11.7	22	NW			5	7	2
3	33	31	32	-1	22	33	0	1 4 6	T	.23	.9	30.36	05	6.9	7.9	12	NE			10	10	3
4	34	29	32	0	22	33	0	1 4 6	2	.11	1.2	30.17	34	8.3	9.4	15	NW			4	4	4
5	32	24	28	-4	16	37	0		1	0	0	30.23	28	2.6	8.3	12	NW			7	6	5
6	34	32	33	1	21	32	0	8	1	T	T	29.97	27	8.0	9.4	12	W			10	10	6
7	39	31	35	3	22	30	0	8	0	0	0	29.90	28	13.6	13.7	21	W			5	6	7
8	31	23	27	-5	8	38	0		0	0	0	30.32	31	13.2	14.5	21	NW			1	4	8
9	28	21	25	-7	18	40	0	1 4 6	2	.28	3.7	30.21	04	11.3	13.5	23	NE			10	10	9
10	32	24	28	-4	24	37	0	1 4 6	4	.28	1.0	30.18	02	8.0	8.3	11	NE			10	10	10
11	39	30	35	3	30	30	0	1 6 8	5	.56	0	29.87	35	4.9	8.2	22	NW			10	9	11
12	31	20	26	-6	13	39	0		2	0	0	30.18	31	14.8	15.1	21	NW			4	2	12
13	24	16	20	-12	5	45	0		2	0	0	30.36	31	12.9	13.8	18	NW			4	2	13
14	33	18	26	-6	12	39	0	8	1	0	0	30.39	23	8.5	10.6	18	SW			9	6	14
15	44	31	38	6	26	27	0	8	1	0	0	29.87	24	11.4	11.8	19	SW			10	8	15
16	47	38	43	11	33	22	0	8	T	0	0	29.76	29	6.7	8.5	13	W			10	10	16
17	44	10	27	-5	15	38	0		T	0	0	30.16	01	12.9	12.9	20	N			3	5	17
18	24	7o	16o	-16	3	49	0	1 6	T	T	T	30.48	02	6.5	7.5	14	N			10	8	18
19	43	22	33	1	27	32	0	1 6 8	T	.03	0	30.05	30	8.6	10.5	17	NW			4	5	19
20	32	24	28	-4	17	37	0		0	0	0	30.33	04	10.0	10.5	14	NE			9	7	20
21	57	31	44	12	37	21	0	2 8	0	.88	9	30.03	04	9.5	16.4	26	S			10	9	21
22	50	39	45	13	35	20	0		0	0	0	30.05	28	9.2	10.1	17	NW			5	5	22
23	59	37	48	16	40	17	0	1 8	0	0	0	29.99	26	6.3	8.9	19	NW			6	6	23
24	45	36	42	10	25	23	0	4	T	T	T	30.27	31	9.0	9.4	18	NW			9	9	24
25	5o	39	45	13	25	20	0	8	0	0	0	30.29	26	5.9	7.5	10	SW			7	6	25
26	48	35	42	10	30	23	0	1 8	0	.02	0	30.29	14	3.4	6.8	10	S			9	7	26
27	66o	41	54o	22	46	11	0	1 8	0	.17	0	29.80	29	11.6	13.5	29	W			8	8	27
28	56	43	50	18	40	15	0	1 8	0	.19	0	29.91	33	3.1	7.9	20	NE			10	9	28
29	51	40	46	14	35	19	0	1 8	0	.0	0	29.94	31	9.5	11.2	23	NW			3	4	29
30	56	37	47	15	37	18	0	8	0	0	0	30.02	19	3.2	8.1	13	S			1	3	30
31	61	37	49	17	39	16	0	1 8	0	0	0	29.77	23	8.3	13.7	37	NW			5	3	31
Sum	1298	Sum 807				Total 903	Total 0			Total 2.78	Total 4.4	For the month: 30.13	31	8.0	10.7	37	NW	Total	% for month	Sum 318	Sum 208	
Avg	41.9	Avg 29.3	Avg 35.6	Dep. 3.5	Avg 25	Dep. -117	Dep. 0	Number of days: Precipitation ≥ .01 inch 11		Dep. +0.10						Date: 31		Possible		Avg 7.0	Avg 6.7	

Season to date: Snow, ice pellets ≤ 1.0 inch 3

Number of days: Maximum Temp. ≤ 90°F	≥ 32°	Minimum Temp. ≤ 32°	≤ 0°	Season to date: Total 2370	Total 0	Thunderstorms 0
0	8	20	0	Dep. +344	Dep. 0	Heavy fog ≤ 1

Greatest in 24 hours and dates: Precipitation .88 on 21; Snow, ice pellets 3.7 on 9

Clear 6 Partly cloudy 11 Cloudy 14

Greatest depth on ground of snow, ice pellets or ice and date: 5 on 11

HOURLY PRECIPITATION (Water equivalent in inches)

Date	A.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	P.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	Date
1	T	.01	T	.01	T	T	T	T	T			.01		T											1
2																									2
3			T	T	T	T	T	T					T	T	T	.01	.03	.02	.05	.04	.03	.02	.01	.02	3
4	.02	.02	.02	.04	.01	T																			4
5																T	T								5
6																									6
7																									7
8																									8
9		T	.01	.01	.02	.02	.04	.03	.06	.05	.02	.01	.01	T	T										9
10			T	T	.01	.01	.02	.09	.03	.04	.05	.01	.01	.01	.01	.01	T	T	T	T	T	T	T	T	10
11	T	T	T	.02	.01	.02	.02	.04	.11	.17	.12	.01	.02	.01		.01									11
12																									12
13																									13
14																									14
15																									15
16																									16
17																									17
18														T											18
19	T	T	T	T	T	.01	.02		T												T	T	T		19
20																									20
21					T	T	.01	.05	.01	.01		.13	.11	.21	.27	.03	.04	.01							21
22																									22
23																									23
24														T											24
25																									25
26																									26
27	T	.02	.05	.03	T	.06	.01											T	T	T	T	T	.01	.01	27
28																T	.01	.02	.10	.05	T	.01	T		28
29																									29
30																									30
31																									31

* Extreme temperatures for the month. May be the last of more than one occurrence.
– Below zero temperature or negative departure from normal.
$ ≥ 70° at Alaskan stations
Also on an earlier date, or dates.
X Heavy fog restricts visibility to ¼ mile or less.
T In the Hourly Precipitation table and in columns 9, 10, and 11 indicates an amount too small to measure.

The season for degree days begins with July for heating and with January for cooling.
Data in columns 6, 12, 13, 14, and 15 are based on 8 observations per day at 3-hour intervals.
Wind directions are those from which the wind blows. Resultant wind is the vector sum of wind directions and speeds divided by the number of observations. Figures for directions are tens of degrees from true North; i.e., 09 = East, 18 = South, 27 = West, 36 = North and 00 = Calm. When directions are in tens of degrees in Col. 17, entries in Col. 16 are fastest observed 1-minute speeds. If the / appears in Col. 17 speeds are gusts.
Any errors detected will be corrected and changes in summary data will be annotated in the annual summary.

Subscription Price: Local Climatological Data $ 2.00 per year including annual issue if published, foreign mailing 75¢ extra. Single copy: 20¢ for monthly issue; 15¢ for annual summary. Make checks payable to Department of Commerce, NOAA. Send payments and orders to National Climatic Center, Federal Building, Asheville, North Carolina 28801.

I certify that this is an official publication of the National Oceanic and Atmospheric Administration, and is compiled from records on file at the National Climatic Center, Asheville, North Carolina 28801.

William H. Haggard
Director, National Climatic Center

SUMMARY BY HOURS

Hour Local time	Sky cover Tenths	Station pressure In.	Averages: Temperature Air °F	Wet bulb °F	Dew Pt. °F	Relative humidity pct	Wind speed m.p.h.	Resultant wind: Direction	Speed m.p.h.
01	6	30.14	33	30	23	68	9.9	31	4.0
04	7	30.13	33	30	24	70	10.0	32	4.9
07	7	30.15	33	30	24	70	10.1	32	5.3
10	7	30.17	35	32	25	68	10.9	33	4.7
13	7	30.10	38	33	25	61	11.6	29	4.8
16	7	30.09	39	34	26	60	11.1	29	4.9
19	7	30.12	37	33	26	64	11.1	29	6.3
22	6	30.14	35	32	24	69	10.8	31	4.1

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NOTICE: CLIMATOLOGICAL NORMALS BASED ON THE PERIOD 1941-1970 ARE EFFECTIVE AS FOLLOWS

Plaintiff's Exhibit I (4)

OBSERVATIONS AT 3-HOUR INTERVALS

HOUR	SKY COVER Tenths	CEILING Hnds of ft	VISIBILITY WHOLE MILES	VISIBILITY FRACTION	WEATHER	TEMPERATURE AIR °F	TEMPERATURE WET BULB °F	TEMPERATURE DEW PT °F	REL HUM %	WIND DIR	WIND SPEED Knots
					DAY 01						
01	10	9	7		R	36	32	32	89	06	12
04	10	3	2		R	36	35	34	94	06	9
07	10	3	2		R	37	36	34	89	01	9
10	10	4	3		R	38	37	35	89	29	4
13	10	10	7		R	41	38	37	86	27	11
16	10	10	6		R	42	38	34	79	27	11
19	10	10	6		R	41	38	36	82	24	9
22	9	10	6		R	38	37	36	89	27	9
					DAY 02						
01	10	6	4		R	38	37	36	89	05	12
04	10	6	4		R	36	35	34	94	06	9
07	10	4	3		R	37	36	35	89	01	9
10	10	4	3		R	38	37	35	89	29	4
13	10	10	7		R	41	38	37	86	27	11
16	10	10	6		R	42	38	34	79	27	11
19	10	10	6		R	41	38	36	82	24	9
22	9	10	6		R	38	37	36	89	27	9
					DAY 03						
01	10	21	2	0	BR	38	37	36	89	03	9
04	10	3	2		BR	38	37	36	89	36	7
07	10	11	7			38	38	36	89	27	7
10	9	UNL	8			41	38	38	82	31	7
13	9	UNL	10			44	40	38	82	34	10
16	9	UNL	10			44	40	38	82	31	9
19	9	UNL	10			42	38	36	82	32	9
22	9	UNL	10			38	36	34	82	32	9
					DAY 04						
01	10	39	5		H	38	36	34	82	27	12
04	9	34	6		H	38	36	34	82	27	11
07	9	30	5		H	38	36	34	82	27	11
10	8	250	9			38	36	34	82	31	10
13	7	250	9			38	36	34	82	31	9
16	4	UNL	10			38	36	34	82	32	9
19	3	UNL	10			38	36	34	82	32	9
22	3	UNL	10			38	36	34	82	32	9
					DAY 05						
01	10	130	14			38	35	32	67	36	10
04	10	100	12			37	33	31	71	34	9
07	10	100	12			36	33	31	78	33	9
10	1	UNL	13			34	32	30	82	31	9
13	1	UNL	13			34	32	30	82	34	10
16	2	UNL	13			34	32	30	82	34	10
19	2	UNL	13			34	32	30	82	34	10
22	3	UNL	13			34	32	30	82	34	10
					DAY 06						
01	10	37	12			32	27	17	54	24	8
04	10	28	10			32	28	19	59	28	8
07	10	31	7			32	29	24	72	27	10
10	10	44	8		H	32	29	24	72	31	9
13	10	30	8			34	29	19	54	32	9
16	10	16	3		SW	36	29	12	39	32	7
19	10	37			H	34	30	22	62	29	10
22	8	90	7			34	30	22	62	29	7
					DAY 07						
01	10	39	5		H	33	30	26	78	27	12
04	9	34	6		H	33	30	26	78	27	9
07	9	30	5		H	34	30	26	75	27	11
10	0	250	9			34	30	26	75	27	11
13	0	250	9			36	32	28	75	27	11
16	1	UNL	10			36	32	28	75	27	11
19	1	UNL	10			36	32	28	75	27	11
22	1	UNL	10			36	32	28	75	27	11
					DAY 08						
01	10	3	3			38	35	32	75	32	6
04	10	3	3			38	35	32	75	32	6
07	10	10	3			38	35	32	75	32	6
10	10	12	1	0	RF	38	35	32	75	32	6
13	10	25	3	0	RF	38	36	33	78	32	6
16	10	25	3		H	38	36	33	78	32	6
19	10	UNL	10			38	36	33	78	32	6
22	10	UNL	10			38	36	33	78	32	6
					DAY 09						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 10						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 11						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 12						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 13						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 14						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 15						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 16						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 17						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 18						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 19						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 20						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 21						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 22						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 23						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 24						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 25						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 26						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 27						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 28						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 29						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 30						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6
					DAY 31						
01	10	30	10			38	36	33	78	32	6
04	10	30	10			38	36	33	78	32	6
07	10	30	10			38	36	33	78	32	6
10	10	30	10			38	36	33	78	32	6
13	10	30	10			38	36	33	78	32	6
16	10	30	10			38	36	33	78	32	6
19	10	30	10			38	36	33	78	32	6
22	10	30	10			38	36	33	78	32	6

NOTES

CEILING COLUMN—

UNL indicates an unlimited ceiling.

WEATHER COLUMN—

*	Tornado
T	Thunderstorm
Q	Squall
R	Rain
RW	Rain showers
ZR	Freezing rain
L	Drizzle
ZL	Freezing drizzle
S	Snow
SP	Snow pellets
K	Ice crystals
SW	Snow showers
SG	Snow grains
IP	Ice pellets
A	Hail
F	Fog
IF	Ice fog
GF	Ground fog
BD	Blowing dust
BN	Blowing sand
BS	Blowing snow
BY	Blowing spray
K	Smoke
H	Haze
D	Dust

WIND COLUMNS—

Directions are those from which the wind blows, indicated in tens of degrees from true North; i. e., 09 for East, 18 for South, 27 for West. Entry of 00 in the direction column indicates calm.

Speed is expressed in knots; multiply by 1.15 to convert to miles per hour

ADDITIONAL DATA

Other observational data contained in records on file can be furnished at cost via microfilm, microfiche, or paper copies of the original records. Inquiries as to availability and costs should be addressed to: Director, National Climatic Center, Federal Building, Asheville, North Carolina 28801.

STATION: NEW YORK /LAGUARDIA/ YEAR & MONTH: 74 01

U.S. DEPARTMENT OF COMMERCE
NATIONAL CLIMATIC CENTER
FEDERAL BUILDING
ASHEVILLE, N.C. 28801

AN EQUAL OPPORTUNITY EMPLOYER

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF COMMERCE
210

FIRST CLASS

Plaintiff's Exhibit I (5)

LOCAL CLIMATOLOGICAL DATA

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENVIRONMENTAL DATA SERVICE

NEW YORK, NEW YORK
NATIONAL WEATHER SERVICE OFC
JOHN F. KENNEDY INTL AIRPORT
JANUARY 1974

Latitude 40 ° 39 ' N Longitude 73 ° 47 ' W Elevation (ground) 13 ft. Standard time used: EASTERN WBAN #94789

Date	Temperature °F: Maximum	Minimum	Average	Departure from normal	Average dew point	Degree days Base 65°: Heating	Cooling	Weather types on dates of occurrence (1 Fog, 2 Heavy fog ≤, 3 Thunderstorm, 4 Ice pellets, 5 Hail, 6 Glaze, 7 Duststorm, 8 Smoke, Haze, 9 Blowing snow)	Snow, ice pellets or ice on ground at 07AM In.	Precipitation: Water equivalent In.	Snow, ice pellets In.	Avg. station pressure In. Elev. 22 feet m.s.l.	Wind: Resultant direction	Resultant speed m.p.h.	Average speed m.p.h.	Fastest mile: Speed m.p.h.	Fastest mile: Direction	Sunshine: Hours and tenths	Percent of possible	Sky cover Tenths: Sunrise to sunset	Midnight to midnight	Date
1	42	32	37	5	33	28	0	1 8	0	.04	0	30.09	33	9.4	13.8	22	31			10	9	1
2	33	25	29	-3	12	36	0		0	0	0	30.53	33	11.0	12.4	23	31			4	5	2
3	31	28	30	-2	23	35	0	4 6 8	T	.42	T	30.35	05	7.2	7.3	13	04			10	10	3
4	32	25	29	-3	25	36	0	4 6 8	1	.12	1.3	30.16	35	9.9	10.5	14	34			3	5	4
5	28	21	25	-7	18	40	0		T	0	0	30.22	30	3.5	9.8	16	24			6	7	5
6	32	27	30	-2	24	35	0	8	T	T	T	29.97	26	10.0	10.9	16	28			10	10	6
7	37	28	33	1	25	32	0	8	0	0	0	29.91	28	16.9	17.3	26	28			6	5	7
8	29	21	25	-7	8	40	0		0	0	0	30.31	31	13.9	15.7	23	29			1	2	8
9	31	18	25	-7	20	40	0	2 4 6 8	2	.46	4.4	30.20	03	12.7	14.4	21	36			10	10	9
10	33	24	29	-3	26	36	0	1 4 6	4	.18	1.8	30.16	01	11.0	11.2	15	01			10	10	10
11	43	33	38	6	32	27	0	1 6 8	2	.72	0	29.86	33	6.8	9.8	23	32			10	9	11
12	33	22	28	-4	15	37	0		1	T	T	30.17	32	17.0	17.4	23	34			3	2	12
13	25	18	22	-9	7	43	0		T	0	0	30.35	31	14.5	15.0	21	33			4	2	13
14	32	16	24	-7	16	41	0		T	0	0	30.39	23	9.5	10.6	22	24			8	5	14
15	41	30	36	5	28	29	0	8	T	0	0	29.88	25	13.1	13.7	21	26			9	6	15
16	45	33	40	9	34	25	0	8	T	0	0	29.76	25	8.2	9.6	17	32			10	8	16
17	45	12	29	-2	17	36	0		0	0	0	30.14	36	16.4	16.8	24	34			3	3	17
18	27	10*	19*	-12	5	46	0	6 8	T	0	0	30.47	03	9.1	9.4	18	01			10	8	18
19	46	26	36	5	28	29	0	1 6 8	1	.04	0	30.06	30	10.3	12.4	20	31			5	5	19
20	32	24	28	-3	19	37	0		0	0	0	30.32	05	8.0	9.6	15	04			9	7	20
21	54	32	43	12	40	22	0	2 8	0	.49	0	30.01	11	3.7	15.2	26	19			10	9	21
22	53	37	45	14	37	20	0	8	0	0	0	30.05	27	10.5	12.5	17	32			3	4	22
23	55	35	45	14	41	20	0	8	0	0	0	29.99	20	3.7	8.9	23	34			5	5	23
24	48	39	44	13	26	21	0		T	0	0	30.26	31	6.8	11.9	23	32			9	8	24
25	48	36	42	11	32	23	0	8	0	0	0	30.28	23	8.5	9.2	14	25			7	7	25
26	47	38	40	9	35	25	0	2 8	0	.02	0	30.28	18	9.2	6.9	12	12			10	9	26
27	65*	44	54*	25	44	9	0	2 8	0	.18	0	29.81	23	15.4	18.0	22	24			7	8	27
28	53	42	48	17	41	17	0	2 8	0	.20	0	29.90	18	2.3	9.1	30	18			10	9	28
29	51	42	47	16	36	18	0	2	0	0	0	29.94	29	9.2	12.7	23	33			3	5	29
30	51	37	44	13	38	21	0	1 8	0	0	0	30.02	17	4.6	7.8	13	18			1	3	30
31	58	39	49	18	39	16	0	2 8	0	0	0	29.79	26	8.9	13.7	31	31			4	3	31
Sum	1280	Sum	893			Total 920	Total 0	Number of days		Total 2.83	Total 4.7	For the month: 30.12	31	9.0	12.0	31	31	Total	% for	Sum 212	Sum 200	
Avg.	41.3	Avg.	28.8	Avg. 35.1	Dep. 3.7	Avg. 27	Dep. -122	Dep. 0	Precipitation ≥ .01 inch 11	Dep. 0.14						Date	31	Possible	month	Avg. 8.8	Avg. 6.5	
								Season to date	Snow, ice pellets ≥ 1.0 inch 3	Greatest in 24 hours and dates: Precipitation			Snow, ice pellets			Greatest depth on ground of snow, ice pellets or ice and date					
Number of days: Maximum Temp. ≤ 90°	Maximum Temp. ≥ 32°	Minimum Temp. ≥ 32°	Minimum Temp. ≤ 0°		Total 2462	Total 0	Thunderstorms 0		.72	11	4.4	9		1	10					
0	10	19	0		Dep. -177	Dep. 0	Heavy fog ≤ 7															
							Clear 8	Partly cloudy 10	Cloudy 13													

HOURLY PRECIPITATION (Water equivalent in inches)

Date	A.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	P.M. Hour ending at: 1	2	3	4	5	6	7	8	9	10	11	12	Date
1	.01	.01	T	T	T	T	.02	T	T																1
2																									2
3			T	T	.01	.01							T	.01	.02	.02	.03	.04	.03	.06	.06	.05	.05	.03	3
4	T	.02	.02	.02	.03	.02	.01																		4
5																									5
6																						T	T		6
7																									7
8																									8
9		T	.02	.03	.05	.03	.09	.11	.08	T	T	.01	.02												9
10					T	T	.04	.02	.06	.04	T		T	T	.01	.01	T	T	T	T	T	T	T	T	10
11	T	T	T	.01	.01	.04	.06	.07	.11	.12	.14	.10	T	.03	T	.03	T								11
12															T	T									12
13																									13
14																									14
15																									15
16																									16
17																									17
18																					T				18
19	T	T	T	T	T	T	.01	T	.03	T	T														19
20																									20
21					T	T	T	T				T	.01	.10	.24	.03	.05	.02							21
22																									22
23																									23
24														T		T					T	T			24
25																									25
26																	T	T	T	T	T	T	.02	T	26
27	T	T	.05	.03	.04	.06	T								T	T	T	.01	.10	.08	T	.01			27
28																									28
29																									29
30																									30
31																									31

* Extreme temperatures for the month. May be the last of more than one occurrence.
– Below zero temperature or negative departure from normal.
‡ ≥ 70° at Alaskan stations.
Also on an earlier date, or dates.
Heavy fog restricts visibility to ¼ mile or less.
T In the Hourly Precipitation table and in columns 9, 10, and 11 indicates an amount too small to measure.

The season for degree days begins with July for heating and with January for cooling.
Data in columns 6, 12, 13, 14, and 15 are based on 8 observations per day at 3-hour intervals.
Wind directions are those from which the wind blows. Resultant wind is the vector sum of wind directions and speeds divided by the number of observations. Figures for directions are tens of degrees from true North; i.e., 09 = East, 18 = South, 27 = West, 36 = North and 00 = Calm. When directions are in tens of degrees in Col. 17, entries in Col. 16 are fastest observed 1-minute speeds. If the / appears in Col. 17, speeds are gusts.
Any errors detected will be corrected and changes in summary data will be annotated in the annual summary.

Subscription Price: Local Climatological Data $ 2.00 per year including annual issue if published, foreign mailing 75¢ extra. Single copy: 20¢ for monthly issue; 15¢ for annual summary. Make checks payable to Department of Commerce, NOAA. Send payments and orders to National Climatic Center, Federal Building, Asheville, North Carolina 28801.

I certify that this is an official publication of the National Oceanic and Atmospheric Administration, and is compiled from records on file at the National Climatic Center, Asheville, North Carolina 28801.

William H. Haggard
Director, National Climatic Center

SUMMARY BY HOURS

Hour Local Time	AVERAGES: Sky cover Tenths	Station pressure In.	Temperature: Air °F	Wet bulb °F	Dew Pt. °F	Relative humidity %	Wind speed m.p.h.	Resultant wind: Direction	Resultant wind: Speed m.p.h.
01	6	30.13	33	30	26	76	12.3	31	5.6
04	6	30.13	32	30	25	78	11.4	31	4.6
07	7	30.14	32	30	25	79	11.4	32	5.1
10	7	30.16	35	32	27	75	11.9	32	4.4
13	6	30.10	38	34	28	68	12.5	28	4.8
16	7	30.08	38	35	28	68	11.9	29	4.1
19	6	30.11	36	33	28	71	12.4	29	5.9
22	6	30.13	34	32	26	74	12.4	31	6.8

Plaintiff's Exhibit I

OBSERVATIONS AT 3-HOUR INTERVALS

HOUR	SKY COVER tenths	CEILING hds. of ft.	VISIBILITY whole miles	VISIBILITY fract. miles	WEATHER	TEMPERATURE AIR °F	TEMPERATURE WET BULB °F	TEMPERATURE DEW PT. °F	REL. HUM %	WIND dir.	WIND speed knots
					DAY 01						
01	10	8	4		R	33	33	32	96	06	9
04	10	5	4		L	36	36	36	100	01	15
07	10	4	2		LF	36	36	35	96	36	8
10	10	5	4		H	38	38	37	96	26	6
13	10	40	10			39	39	38	96	21	9
16	10	35	15			42	39	35	78	31	14
19	10	75	13			37	33	27	67	33	16
22	7	250	15			34	30	24	67	32	17
					DAY 02						
01	10	6	4		L	29	28	27	92	32	14
04	10	3	2		L	28	27	26	92	32	14
07	10	4	2		L	27	26	25	92	32	14
10	10	4	2		L	29	28	27	92	32	14
13	10	40	10			31	29	25	83	33	15
16	10	35	15			30	26	21	69	34	16
19	10	90	10			29	25	19	72	33	16
22	10	44	10			29	25	19	78	32	14
					DAY 03						
01	10	40	10			29	25	19	72	32	14
04	10	37	10			30	28	24	78	32	14
07	10	19	10			29	27	21	72	32	14
10	10	22	7			29	27	23	78	32	14
13	10	19	8		RW	30	28	24	78	32	14
16	10	16	4		RW	30	29	28	92	32	14
19	10	7	5		RW-	30	30	29	96	34	8
22	10	7	5		RW	30	30	29	96	34	8
					DAY 04						
01	10	8	5		TPH	29	29	28	96	01	11
04	10	6	2		S	28	28	27	96	01	10
07	10	35	10			27	27	26	96	36	9
10	10	90	8			28	28	26	92	35	10
13	3	UNL	10			30	29	26	85	34	12
16	4	UNL	13			31	29	26	82	05	4
19	0	UNL	14			29	27	22	75	34	10
22	0	UNL	19			26	24	19	78	31	7
					DAY 05						
01	0	UNL	15			25	23	18	75	32	10
04	0	200	12			22	20	16	75	32	8
07	0	200	10			22	21	16	78	01	7
10	3	UNL	15			24	22	17	75	02	11
13	4	UNL	15			27	24	16	63	31	9
16	4	UNL	12			26	24	19	78	10	8
19	10	250	10			26	23	22	88	21	9
22	10	35	10			27	26	24	88	23	10
					DAY 06						
01	10	31	10			27	26	24	88	29	10
04	10	22	7			27	25	23	88	28	12
07	10	22	7			28	27	25	89	28	12
10	10	31	4		H	30	28	25	82	32	9
13	10	40	6		H	31	28	23	69	27	8
16	10	30	7		H	30	28	24	78	22	8
19	10	30	7			30	29	28	89	29	11
22	10	30	7			30	28	25	82	26	11
					DAY 07						
01	8	31	6		H	30	29	27	89	27	14
04	9	28	5		H	29	29	27	92	25	11
07	10	100	7		H	29	29	28	96	27	12
10	8	200	4		KH	31	30	27	83	27	12
13	7	200	8			30	30	28	92	29	10
16	6	200	8			33	31	26	64	28	11
19	3	UNL	10			33	31	25	69	27	10
22	2	UNL	15			30	28	19	64	29	16
					DAY 08						
01	8	200	10			27	23	12	53	29	20
04	8	200	12			24	21	11	58	29	15
07	1	UNL	15			21	18	07	55	30	17
10	0	UNL	20			25	21	09	56	32	19
13	0	UNL	20			27	22	07	49	31	14
16	1	UNL	20			27	21	04	47	34	8
19	1	UNL	15			24	19	04	42	32	9
22	1	UNL	15			22	19	07	52	02	11
					DAY 09						
01	10	250	15			22	19	10	60	07	11
04	10	5	1		SP	19	19	17	92	07	12
07	10	3	0	4	SP	20	20	20	100	09	14
10	10	5	3		RIPP	20	20	20	100	05	12
13	10	5	7			20	20	18	92	05	12
16	10	8	6		H	21	20	18	88	01	10
19	10	14	10			23	21	18	81	36	12
22	8	22	10			24	23	19	81	36	8
					DAY 10						
01	10	26	10			24	23	21	88	02	9
04	10	39	10			26	25	22	85	03	10
07	10	16	4		S	28	26	23	82	01	10
10	10	7	3		SIP	28	27	23	82	34	9
13	10	9	3		RP	30	28	27	88	34	13
16	10	4	2		ZLP	31	31	31	100	01	11
19	10	4	2	6	LP	32	32	32	96	02	12
22	10	4	3		RP	33	32	32	96	02	10
					DAY 11						
01	10	3	2		RP	33	32	32	96	05	7
04	10	4	4		LP	34	33	33	96	04	9
07	10	8	3		RP	34	34	33	96	36	7
10	10	8	3		RP	35	33	31	88	05	4
13	10	8	3		P	37	35	33	85	34	9
16	10	6	0	12	RP	39	37	35	84	27	9
19	10	26	4		KH	40	37	34	79	28	11
22	10	UNL	15			38	35	26	63	32	20
					DAY 12						
		UNL	15			36	26	18	41	32	18
		UNL	15			27	24	15	41	33	13
		UNL	15			28	24	13	38	32	14
		UNL	15			30	26	18	41	30	16
		UNL	15			32	27	18	36	32	13
		UNL	15			34	29	19	33	33	13
		UNL	15			34	29	19	33	33	13
		UNL	15			34	29	19	33	33	13
					DAY 13						
01	0	UNL	15			21	16	07	58	32	17
04	0	UNL	15			19	16	09	67	30	11
07	2	UNL	10			18	16	07	62	32	14
10	0	UNL	15			20	17	07	57	33	13
13	0	UNL	15			23	19	07	50	28	12
16	0	UNL	20			23	20	06	44	31	12
19	0	UNL	15			22	19	08	58	32	15
22	0	UNL	15			20	17	07	57	32	15
					DAY 14						
		UNL	15			20	17	08	69	35	9
		UNL	10			17	16	10	74	07	5
		UNL	10			19	17	10	68	12	4
		200	7			24	21	12	69	09	3
		UNL	15			29	26	20	69	20	11
		UNL	15			31	28	21	66	24	12
		UNL	15			32	29	22	69	24	12
		UNL	15			32	29	23	69	24	12
					DAY 15						
		UNL	15			32	29	23	69	29	16
		UNL	15			32	29	23	69	28	16
		UNL	10			30	28	24	78	25	12
		250	4		KH	33	32	28	78	24	10
		UNL	15		KH	35	32	28	74	24	10
		UNL	15		KH	37	33	31	79	23	9
		UNL	20			39	37	34	82	20	7
		UNL	15			38	36	32	83	20	8
		UNL	15			36	34	32	88	23	8
					DAY 16						
		UNL	10			38	36	33	82	27	8
		UNL	8			36	34	32	85	25	8
		55	7			36	33	30	78	22	8
		55	5		KH	40	37	34	79	22	10
		80	5		KH	42	39	34	73	22	12
		49	5		KH	43	41	36	71	31	9
		250	5		H	42	39	35	78	28	9
		UNL	7			41	38	35	79	27	9
					DAY 17						
		31	10			43	39	35	80	36	10
		20	10			40	37	32	73	02	9
		20	10			39	36	32	78	36	13
		12	5			38	36	32	78	36	13
		15	5			30	26	18	61	02	9
		15	5			28	23	00	53	35	12
		15	5			28	23	00	53	34	10
		15	5			29	26	20	67	36	10
		15	5			29	26	20	67	36	10
					DAY 18						
		15	6			11	09	03	93	01	13
		15	5			11	09	02	89	02	13
		15	5			10	08	01	86	01	14
		10	5			13	11	01	86	02	9
		10	5			16	14	02	86	04	9
		10	5			20	18	10	69	05	9
		10	5			23	21	15	71	05	9
		10	5			24	23	18	78	05	9
					DAY 19						
		7	4		ZLR	27	26	23	85	27	8
		0	1	6	IRP	28	28	25	92	29	8
		8	5		RHP	32	32	30	89	28	12
		40	4		RHKH	36	35	35	89	26	13
		UNL	8			48	41	36	71	31	17
		UNL	15			44	38	30	58	34	14
		UNL	15			39	34	25	57	33	12
		UNL	15			33	30	25	67	35	9
					DAY 20						
		UNL	10			31	28	23	72	35	10
		UNL	10			28	24	18	72	02	7
		22	15			26	22	18	68	06	9
		60	15			27	24	16	63	03	10
		49	15			28	24	17	58	09	8
		23	13			30	28	19	64	10	8
		23	13			30	27	19	61	08	9
		23	13			32	29	22	69	06	11
					DAY 21						
		15	8			31	28	23	72	35	10
		10	8			30	26	20	72	35	9
		4	2	8	SH	46	39	37	89	08	14
		3	1	8	F	46	43	43	96	03	12
		2	1	8	F	50	49	48	92	12	17
		4	0	10	BF	49	48	48	96	19	17
		4	0	8	H	47	46	46	96	19	13
		4	0	8	H	44	43	43	96	17	13
					DAY 22						
		UNL	10			41	40	38	89	27	13
		22	10			40	38	36	89	29	10
		20	7			38	37	36	93	24	10
		UNL	3		K	42	41	39	89	29	13
		UNL	15			32	46	39	89	29	12
		UNL	15			43	42	39	89	33	12
		UNL	12			44	40	36	74	26	8
		UNL	10			41	38	33	79	22	9
					DAY 23						
		UNL	10			36	32	32	89	09	3
		UNL	10			33	34	33	93	13	7
		7	7			42	41	39	89	10	4
		UNL	6		KH	46	44	42	86	10	9
		UNL	7			52	48	43	77	17	8
		43	7			51	48	43	80	20	8
		UNL	6		H	54	49	45	73	24	8
		UNL	6		H	50	47	43	77	22	15
					DAY 24						
		UNL	12			30	26	20	79	21	8
		250	7			33	32	30	89	21	8
		250	5		K	33	32	30	89	14	6
		250	6		K	38	36	33	82	20	9
		130	7			44	39	33	69	19	8
		80	6		K	44	41	38	80	20	8
		34	5		RK	44	42	40	86	08	8
		21	01	8	LP	45	44	44	96	14	8
					DAY 25						
		0	0		P	43	44	44	96	10	9
		UNL	4		GP	45	44	44	96	24	9
		UNL	15			47	42	37	68	33	17
		UNL	20			48	42	34	59	33	18
		UNL	20			51	42	34	52	29	14
		UNL	15			49	42	35	58	33	7
		250	10			45	42	39	80	25	11
		50	8			42	38	33	71	25	7
					DAY 26						
		80	10			41	38	33	73	02	4
		UNL	10			38	36	33	82	05	4
		UNL	7			40	37	34	79	09	3
		UNL	7			47	44	40	77	18	7
		UNL	10			50	48	41	71	18	10
		UNL	10			50	46	42	76	18	8
		UNL	8			46	43	41	80	16	9
					DAY 27						
		UNL	8		LP	49	48	48	96	19	17
		UNL	8		RP	48	47	47	96	19	16
		UNL	8		KH	48	47	46	93	20	17
		UNL	8			48	46	46	96	24	19
		UNL	15			52	50	48	85	24	18
		UNL	20			52	50	46	76	24	18
		UNL	20			52	50	46	76	24	18
		UNL	20			52	50	46	76	24	18
					DAY 28						
		UNL	10			48	46	39	69	25	10
		250	8			44	42	39	83	24	7
		UNL	8			43	41	38	83	27	8
		80	4		K	48	45	41	77	19	8
		120	3		K	50	46	41	71	17	8
		75	8		RW	49	45	41	74	10	10
		4	5		RP	47	43	41	80	16	10
		4	4		P	45	44	44	96	04	7
					DAY 29						
						43	44	44	96	10	9
						45	44	44	96	24	9
						47	42	37	68	33	17
						48	42	34	59	33	18
						51	42	34	52	29	14
						49	42	35	58	33	7
						45	42	39	80	25	11
						42	38	33	71	25	7
					DAY 30						
						41	38	33	73	02	4
						38	36	33	82	05	4
						40	37	34	79	09	3
						47	44	40	77	18	7
						50	48	41	71	18	10
						50	46	42	76	18	8
						46	43	41	80	16	9
					DAY 31						
		UNL	4		SP	41	40	39	93	20	8
		UNL	4		SP	41	40	38	89	20	4
		150	4		SP	42	39	36	79	16	5
		2	0	4	FR	42	42	42	96	25	9
		UNL	10			50	47	44	80	18	14
		UNL	13			57	50	44	62	28	14
		UNL	12			54	48	42	64	24	16
		UNL	15			45	36	23	42	32	25

NOTES

CEILING COLUMN—

UNL indicates an unlimited ceiling.

WEATHER COLUMN—

* Tornado
T Thunderstorm
Q Squall
R Rain
RW Rain showers
ZR Freezing rain
L Drizzle
ZL Freezing drizzle
S Snow
SP Snow pellets
IC Ice crystals
SW Snow showers
SG Snow grains
IP Ice pellets
A Hail
F Fog
IF Ice fog
GF Ground fog
BD Blowing dust
BN Blowing sand
BS Blowing snow
BY Blowing spray
K Smoke
H Haze
D Dust

WIND COLUMNS—

Direction are those from which the wind is blowing, indicated in tens of degrees from true North: 01 for East, 18 for South, 27 for West. Entry of 00 in the direction column indicates calm.

Speed is expressed in knots; multiply by 1.15 to convert to miles per hour.

ADDITIONAL DATA

Other observational data contained in records on file can be furnished at cost via microfilm, microfiche, or paper copies of the original records. Inquiries as to availability and costs should be addressed to: Director, National Climatic Center, Federal Building, Asheville, North Carolina 28801.

STATION: NEW YORK /J F KENNEDY/ YEAR & MONTH: 74 01

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FIRST CLASS

PLAINTIFF'S EXHIBIT 7

HELLENIC LINES LTD.
57TH STREET PIER
BROOKLYN 20, N. Y.
DIGBY 4-3334

SUPERINTENDENT'S REPORT OF ACCIDENT

(10-46)

TIME AND PLACE

1. PIER NUMBER AND LOCATION: 5th St. Pier
2. DAY: Wed. DATE: 1-9-74 AND TIME OF ACCIDENT: 4:50 P.M.
3. LOCATION OF ACCIDENT (BE SPECIFIC AS TO PART OF HATCH, ETC.): #5 Hatch On Deck
4. IF ABOARD VESSEL OR LIGHTER, NAME: M/V Dessie
5. ACCIDENT OCCURRED ON: [X] SHIP [ ] DOCK [ ] LIGHTER
6. FIRST KNOWLEDGE OF INJURY: 1-9-74
7. INJURED PAID IN FULL THIS DAY? (Yes)
8. HEAD FOREMAN: V. Gerber
9. HATCH OR DOCK FOREMAN: J. Bellos

INJURED PERSON

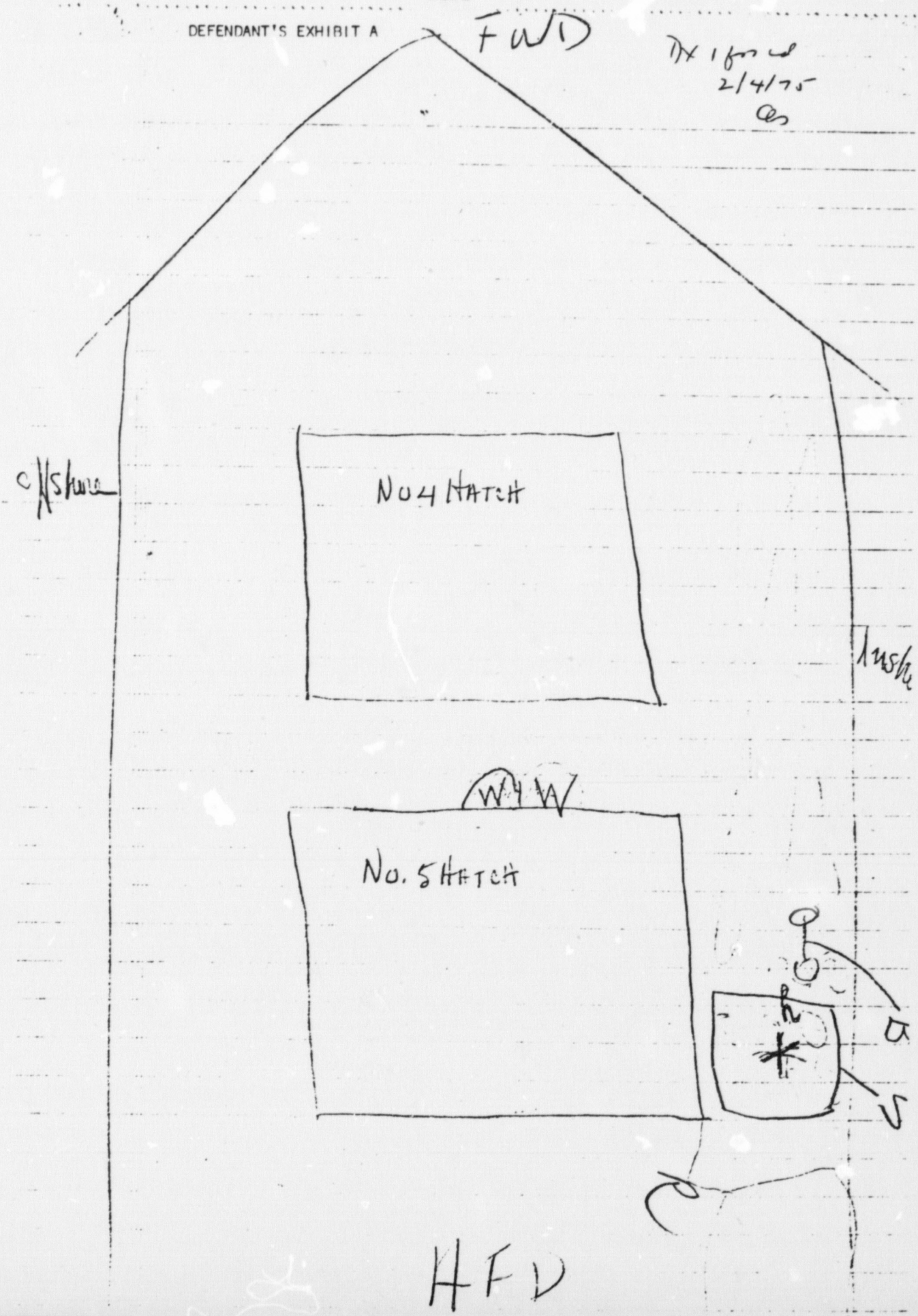
10. NAME OF INJURED EMPLOYEE: Costas Pagoli
11. CHECK NO.: 9575
12. CO. ID NO.:
13. SOC. SEC. NO.: 017-14-4515
14. ADDRESS: 359 40th St. Brooklyn, N.Y. 11232
15. NATIONALITY: Greek
16. SPEAK ENGLISH: Yes
17. AGE: 56
18. MARITAL STATUS: Married
19. NO. OF CHILDREN:
20. OCCUPATION WHEN INJURED: Deck Foreman
21. UNION LOCAL AFFILIATION: 1814
22. WAS ANY PROPERTY DAMAGED?

23. *** DESCRIPTION OF ACCIDENT (DESCRIBE CONCISELY WHAT HAPPENED — INCLUDE OPERATION, EQUIPMENT, ETC.)

Was walking on main deck and slipped on a piece of wood and fell on between beams striking back side head and legs, ends of beams on drums.

24 ***

DEFENDANT'S EXHIBIT A



HELLENIC LINES LIMITED

204a

DEFENDANT'S EXHIBIT R

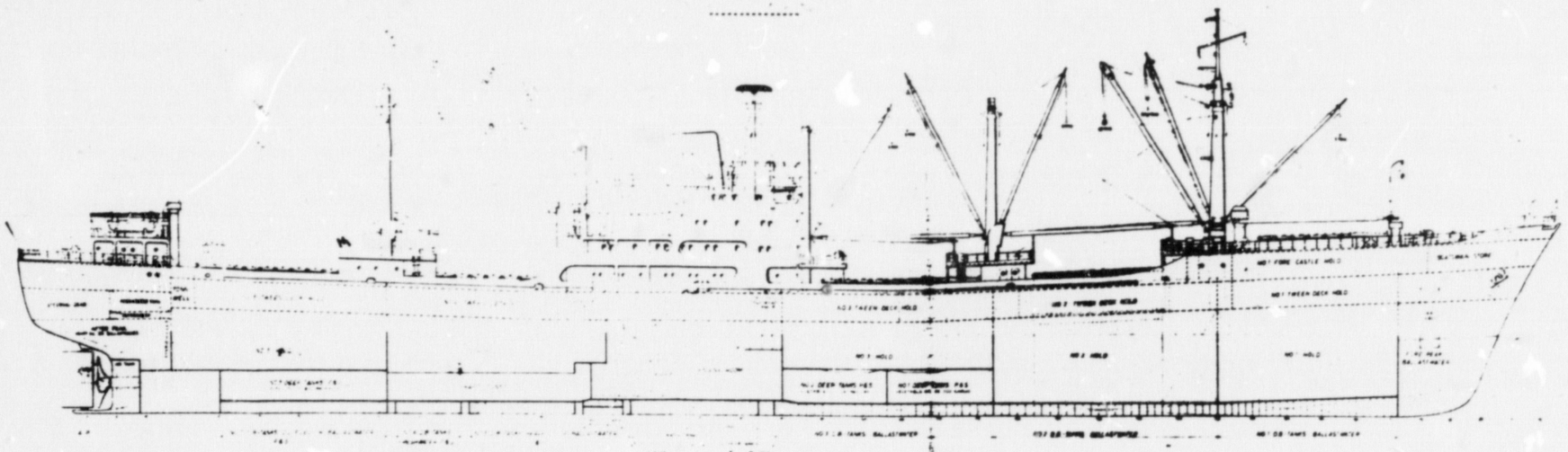
CARGO MOTOR SHIP

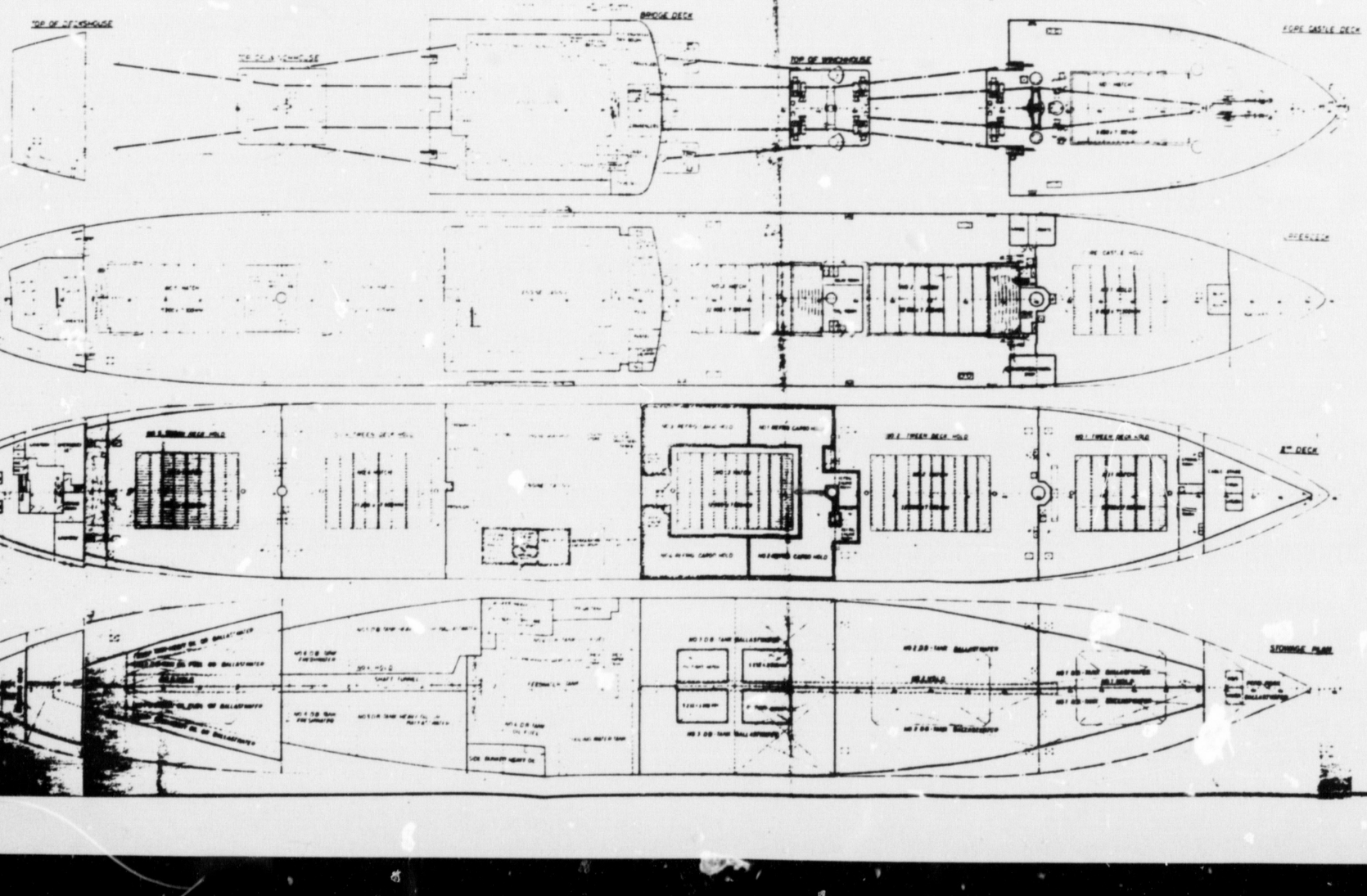
-HELLENIC SPLENDOR-

SCALE : 1 200

BUILDER: SVENDBORG SKIBSVAERFT A/S SVENDBORG

BUILT 1959 , YARD NO 313





CARGO MOTOR SHIP

-HELLENIC SPLENDOR-

BUILT 1959 , YARD NO 313

GENERAL ARRANGEMENT PLAN

MAIN DIMENSIONS:

LENGTH OVERALL	[illegible]
LENGTH BETWEEN P.P.	[illegible]
BREADTH MOULDED	[illegible]
DEPTH TO UPPERDECK	[illegible]
DEPTH TO 2nd DECK	[illegible]
SUMMER FREEBOARD DRAUGHT	[illegible]

Service of three (3) copies of the within Joint Appendix
admitted this 16th day of Dec. 1975

Edwin F. Lambert
for L.P.R. & Custrin
Defendant - Appellees

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